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Federal Register

Tuesday
April 10, 1979

Highlights

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21241 **World Trade Week** Presidential proclamation

21243 **Petroleum Imports** Presidential proclamation

21245 **Energy Emergency—Florida** Presidential determination under the Clean Air Act

21252 **National School Lunches** USDA/FNS apportions child care food service equipment assistance funds; effective 4–3–79

21504 **Food Stamps** USDA/FNS issues proposal on the establishment of a Performance Reporting System by all State agencies; comments by 5–25–79 (Part IV of this issue)

21541 USDA/FNS releases proposal that sets forth requirements for implementing the outreach provisions of the Food Stamp Act of 1977; comments by 5–21–79 (Part IV of this issue)

21323 **Energy Conservation** DOE issues environmental assessment and negative determination for the grants program on weatherization assistance for low-income persons; comments by 4–30–79

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Highlights

21556 **Housing** HUD/Secy proposes to amend existing regulations to establish policies and procedures for securing contract administrators to implement the Section 8 Existing Housing Program; comments 6–11–79 (Part V of this issue)

21580 **Mass Transportation** DOT/UMTA gives notice and requests comments on its guidelines for the Urban Initiatives Program which explains and implements the program; effective 4–4–79; comments by 6–8–79 (Part VII of this issue)

21496 **Social Security** HEW/SSA issues proposal on disclosure of official records and information about individuals; comments by 6–11–79 (Part III of this issue)

21267 **Communication Refunds** FCC adopts final procedures of its fee refund program for eligible individuals who were charged a fee for services rendered by the Commission between 1970 and 1976

21261 **Air Programs** EPA issues final rule on designations of attainment status relative to National Ambient Air Quality Standards

21253 **Exclusion of Aliens** Justice/INS amends regulations to enable aliens to file applications for asylum in exclusion and deportation proceedings; effective 5–10–79

21290 **Interests on Deposits** FDIC in coordination with the FRS and FHLBB proposes amendments which would enhance the return to small savers; comments by 5–4–79

21301 **Labor-Managment Relations** Labor/Secy extends comment period for those labor organizations which may file simplified annual financial reports; comments by 5–10–79

21302 Labor/Secy extends comment period on the responsibility of Labor organizations to make available to members information contained in reports filed with the Department of Labor; comments by 5–10–79

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Title 3—
The President

Proclamation 4654 of April 6, 1979

World Trade Week, 1979

By the President of the United States of America

A Proclamation

A strong position in world trade is one of the foundations of the American economy. By expanding our trade, we enlarge the opportunities for U.S. companies to prosper under our free enterprise system and for U.S. workers to find employment throughout the American industrial complex.

Trade also joins us with other nations of the world in a partnership of peace and trust that advances the well-being of people everywhere. It encourages the international exchange of ideas, knowledge and experience, and assists in developing fuller and more fruitful use of the world's resources.

We in the United States are dedicated to policies that promote freer, wider trade and that avoid the destructive consequences of protectionism. We believe our economy is best protected, and our citizens better served, when barriers to trade between nations are lowered rather than raised.

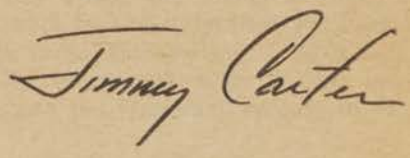
We are the world's largest trading nation. Yet compared to many of our trading partners, we export less of our rich and varied production than we should.

World Trade Week gives us the opportunity to pledge ourselves to exporting as a national priority and renew our determination to succeed in the world marketplace.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the week beginning May 20, 1979, as World Trade Week, and I request all Federal, State and local officials to cooperate in the observance of that week.

I urge business, labor, agricultural, educational, professional and civic groups, and all the people of the United States to observe World Trade Week with gatherings, discussions, exhibits, ceremonies and other appropriate activities that promote awareness of the importance of world trade to our economy and our relations with other nations.

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



[FR Doc. 79-11239
Filed 4-6-79; 3:58 pm]
Billing code 3195-01-M

Proclamation 4655 of April 6, 1979

Imports of Petroleum and Petroleum Products

By the President of the United States of America

A Proclamation

The Secretary of Energy has advised me that the continuation of shortages in international petroleum and petroleum product supplies has resulted in escalating world oil prices which impact directly on the United States economy. This situation requires that imports of crude oil and petroleum products be adjusted by temporarily suspending tariffs and the system of license fees which have been imposed since 1973 under Proclamation No. 3279, as amended. In light of the current market shortages and price conditions the continued imposition of import fees and tariffs, at least for the near term, do not serve the purposes of the Mandatory Oil Import Program and are detrimental to the economy. As a consequence, for the period that the shortages persist, continued imposition of the tariffs and import fees has become unnecessary and burdensome to the American public.

Therefore, the Secretary of Energy has recommended that I temporarily suspend imposition of the import fees and tariffs. Suspension of the fees and tariffs will serve to alleviate some of the world oil price impacts on the American consumer and should also improve access to certain refined products which are threatened to be in short supply. I agree with the changes proposed by the Secretary and they are consistent with the purposes of Proclamation No. 3279, as amended. The temporary suspension of fees and tariffs does not alter the long term purposes or benefits of the import control program established pursuant to Proclamation No. 3279, as amended. This action will adjust the imports of petroleum and petroleum product supplies so that they are not imported in such quantities or under such circumstances as to threaten to impair the national security.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), do hereby proclaim that:

SECTION 1. Section 3(a)(1) of Proclamation No. 3279, as amended, is further amended in subparagraphs (i) and (ii), and by the addition of a subparagraph (viii), to read as follows:

"(i) with respect to imports of crude oil (other than that imported by the Department of Energy, or by another person or agency of the Federal Government acting on behalf of the Department, for the Strategic Petroleum Reserve Program) and natural gas products over and above the levels of imports established in Section 2 of the Proclamation, such fees shall be $0.00 per barrel for the period April 1, 1979 through June 30, 1979. Effective July 1, 1979 such fees shall be $0.21 per barrel unless the Secretary makes the finding prescribed in paragraph 3(a)(1)(viii) in which case the fees shall remain at the $0.00 level;

"(ii) with respect to imports of motor gasoline, unfinished oils, and all other finished products (except ethane, propane, butanes, asphalt and finished products imported by the Department of Energy, or another person or agency of the Federal Government acting on behalf of the Department of Energy, for the Strategic Petroleum Reserve Program), over and above the levels of

imports established in Section 2 of this Proclamation, such fees shall be $0.00 per barrel for the period April 1, 1979 through June 30, 1979. Effective July 1, 1979, such fees shall be $0.63 per barrel unless the Secretary makes the finding prescribed in paragraph 3(a)(1)(viii) in which case the fees shall remain at the $0.00 level;

"(viii) with respect to the fees imposed pursuant to paragraphs 3(a)(1)(i)–(ii), the Secretary may defer the imposition of either the $0.21 or $0.63 fee for a period, not to exceed six months, with respect to any type of crude oil, unfinished oil, or finished product for which the Secretary finds that imposition of the fees would not be in accordance with the purposes of this Proclamation. Reimposition of the fees may be deferred for one additional period, not to exceed six months, upon a similar finding.".

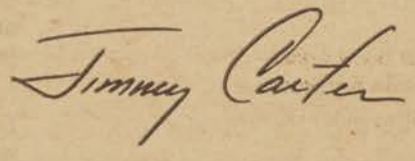
SECTION 2. Section 4 of Proclamation No. 3279, as amended, is amended by the addition of subsections (d) and (e) to read as follows:

"(d) Such regulations may provide for allocation periods of other than one year's duration; *provided,* that the applicable average barrel per day level of imports not subject to the payment of fees provided in Section 2 of this Proclamation is not exceeded on the average in any such period established.

"(e) Notwithstanding the levels established in Section 2 of this Proclamation, such regulations may provide for the suspension of the issuance of licenses not subject to the payment of fees with respect to any type of crude oil, unfinished oil, or finished product for any period in which a fee of $0.00, as provided in Section 3 of this Proclamation, is in effect.".

SECTION 3. Effective as of April 1, 1979, tariffs upon imports of petroleum and petroleum products listed in Schedule 4, Part 10—"Petroleum, natural gas and products derived therefrom," and tariffs upon imports of hydrocarbons listed in Schedule 4, Part 2—"Chemical Elements, Inorganic and Organic Compounds, and Mixtures", of the Tariff Schedules of the United States shall be and are suspended until July 1, 1979, at which time the tariffs shall be reimposed except with respect to any item in Schedule 4, Part 2 or Part 10, for which the Secretary of Energy finds that the reimposition of a tariff would not be in accordance with the purposes of Proclamation No. 3279, as amended. Upon such a finding, the Secretary may defer imposition of the tariff for a period not to exceed six months and may defer imposition of the tariff for one additional period, not to exceed six months, upon a similar finding.

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



[FR Doc. 79-11292
Filed 4-9-79; 10:30 am]
Billing code 3195-01-M

Presidential Determination of April 6, 1979

Determination Under Section 110(f) of the Clean Air Act—Florida

Based on a Petition submitted to me by the Governor of the State of Florida, pursuant to Section 110(f) of the Clean Air Act, I hereby determine that a regional energy emergency exists in the State of Florida of such severity that a temporary suspension of certain particulate and opacity control regulations which apply to fossil-fuel fired electric generating plants under the Florida Air Quality Implementation Plan may be necessary, and that other means of responding to the energy emergency may be inadequate. This determination shall be effective for not more than thirty (30) days. If, during the period of suspension, I find that a regional energy emergency no longer exists in Florida, I will direct that this determination of regional energy emergency be rescinded and that all suspension orders issued by the Governor be terminated effective on the day of that rescission. The Administrator of the Environmental Protection Agency retains full authority to disapprove temporary suspensions of regulations in Florida and to exercise his emergency powers authority under Section 303 of the Clean Air Act, when and if necessary.

I commend the Governor for his commitment to act with care if he suspends air pollution regulations under the authority provided by this determination, since such regulations are important to protect public health. I commend him for undertaking energy conservation measures and for his commitment that no suspension will be granted if the result would be a violation of any national ambient primary or secondary air quality standard.

This determination shall be published in the **Federal Register**.

Jimmy Carter

April 6, 1979.

[FR Doc. 79-11293
Filed 4-9-79; 10:31 am]
Billing code 3195-01-M

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Schedule C

AGENCY: Office of Personnel Management.

ACTION: Corrects and revokes final rules.

SUMMARY: This amendment corrects § 213.3301(b) and revokes §§ 213.3301(a) and 213.3302 because they are no longer applicable.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3301(b) is amended and 213.3301(a) and 213.3302 are revoked as set out below:

§ 213.3301(a) [Revoked].

* * * * *

§ 213.3301(b) Revocation of exceptions.

(a) Except as provided by paragraph (b) of this section the exception from the competitive service for each position at GS–15 and below in the executive branch listed in Schedule C is revoked when the position has been vacant for 60 calendar days or more.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Office of Personnel Management may delay the revocation action for an additional 60 calendar days when the agency demonstrates that it: (1) has been actively recruiting for the position; (2) has made a tentative selection; and (3) has set an appointment date within the additional 60-day period.

(c) An agency shall notify the Office of Personnel Management within 3 work days after a Schedule C position at GS–15 and below has been vacated or filled.

* * * * *

§213.3302 [Revoked].

(5 U.S.C. 3301, 3302, EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10745 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce, Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the titles of certain positions (1) at the Department of Commerce from five Congressional Liaison Officers to five Deputies to the Assistant Secretary to more appropriately reflect the duties of the positions and (2) at the Department of Energy from Assistant to the Administrator—Energy Conservation (Office of the Secretary) to Assistant to the Administrator—Public Affairs, (Bonneville Power Administration) to more appropriately reflect the duties of the position and to reflect an organizational transfer. This position was excepted under Schedule C at the Department of the Interior and was transferred to the Department of Energy on September 30, 1977, but was never published in the Federal Register. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: February 2, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3314(a)(9) is amended and 213.3331(j)(4) is added as set out below:

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(9) One Congressional Liaison Specialist, five Deputies to the Assistant Secretary, two Congressional Liaison Officers, and three Confidential Legislative Assistants.

* * * * *

§ 213.3331 Department of Energy.

* * * * *

(j) *Office of the Assistant Secretary for Resource Applications.* * * *

(4) One Assistant to the Administrator—Public Affairs, Bonneville Power Administration.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10746 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce, Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Commerce and the Department of Health, Education, and Welfare because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATIOIN CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3314(a)(37) and (w)(7) are added and 213.3316(h)(15) is amended as set out below:

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(37) One Private Secretary to the Counsellor to the Secretary.

* * * * *

(w) *Industry and Trade Administration.* * * *

(7) One Confidential Assistant to the Assistant Secretary.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(h) *Office of the Assistant Secretary for Health.* * * *

(15) One Executive Assistant and one Special Assistant to the Commissioner of the Food and Drug Administration.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10747 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Temporary, part-time or intermittent positions of supervisors, assistant supervisors, supervisors' clerks and enumerators in the field service of the Bureau of the Census, which are filled in connection with demographic survey programs are excepted under Schedule A because it is impracticable to examine for them. Temporary, part-time employment under this authority will be for periods not to exceed 1 year each, except that prior Office approval is required for extension of total service beyond 2 years.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3114(d)(1) is amended as set out below:

§ 213.3114 Department of Commerce.

* * * * *

(d) *Bureau of the Census.* (1) Positions of supervisors, assistant supervisors, supervisors' clerks and enumerators in the field service, other than Current Program Interviewers, for temporary, part-time or intermittent employment in connection with demographic survey programs: Provided that temporary, part-time employment will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10748 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Counselor on Labor Management Relations, Office of the Secretary, Department of Commerce because the position is confidential in nature.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT: Donna J. Ashurst, 202-632-3782

Accordingly, 5 CFR 213.3314(a)(36) is added as set out below:

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(36) Counselor on Labor Management Relations.

* * * * *

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10749 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: One position of Administrative Aid, GS-8, and one position of Clerk, GS-4, in the National Technical Information Service, are excepted under Schedule A because examination for them is impracticable. New appointments may not be made after March 30, 1979, under this authority.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3114 is amended by adding paragraph (m)(1), as follows:

§ 213.3114 Department of Commerce.

* * * * *

(m) *National Technical Information Service.* (1) One position of Administrative Aid, GS-8, and one position of Clerk, GS-4. New appointments may not be made after March 30, 1979.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10750 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the title of a position from Staff Assistant to the Administrator (Office of the Secretary) to Staff Assistant to the Deputy Secretary to reflect an organizational transfer. This position formerly existed at the Federal Energy Administration and was subsequently transferred to the Department of Energy on September 30, 1977. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 8, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(a)(2) is amended as set out below:

§ 213.3331 Department of Energy.

(a) *Office of the Secretary.* * * *

(2) Two Confidential Secretaries, one Motor Vehicle Operator and one Staff Assistant to the Deputy Secretary.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-10751 Filed 4-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Executive Office of the President

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revokes the Schedule A authority for all professional staff positions in the Office of Science and Technology because that organization no longer exists. This amendment also excepts under Schedule A 30 positions of Senior Policy Analyst, GS-15; Policy Analyst, GS-11/14; and Policy Research Assistant, GS-9, in the Office of Science and Technology Policy

because examination for them is impracticable.

EFFECTIVE DATE: February 16, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3103(a) is revoked and (h)(1) is added, as follows:

§ 213.3103 Executive Office of the President.

(a) [Revoked]

* * * * *

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10752 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Federal Deposit Insurance Corporation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C a position because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3333(n) is added as set out below:

§ 213.3333 Federal Deposit Insurance Corporation.

* * * * *

(n) One Secretary to the Director, Congressional Liaison Staff.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10753 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Federal Deposit Insurance Corporation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Director, Congressional Liaison Staff, Office of the Chairman, Federal Deposit Insurance Corporation because the position is confidential in nature.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT: Donna J. Ashurst, 202–632–3782.

Accordingly, 5 CFR 213.3333(m) is added as set out below:

§ 213.3333 Federal Deposit Insurance Corporation.

* * * * *

(m) One Director, Congressional Liaison Staff, Office of the Chairman.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10754 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; General Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: One position of Assistant to the Chairman, GSA Board of Contract Appeals, is excepted under Schedule A because it is impracticable to examine for it.

EFFECTIVE DATE: March 14, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3137(d)(1) is added as set out below:

§ 213.3137 General Services Administration.

* * * * *

(d) *Board of Contract Appeals.* (1) One position of Assistant to the Chairman. No one may serve under this authority after March 30, 1981.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance Systems Manager.

[FR Doc. 79–10755 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Department of Health, Education, and Welfare, Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) revokes a position at the Department of Health, Education, and Welfare because the need for the position no longer exists and (2) excepts certain positions at Department of Health, Education, and Welfare and Department of Energy because they are confidential in nature. Appointments may be made without examination by the Office of Personnel Management.

EFFECTIVE DATES: Department of Health, Education, and Welfare—February 2, 1979; Department of Energy—January 30, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3316(n)(19) is revoked and 213.3316(n)(22) and 213.3331(l)(2) are added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(n) *Office of the Assistant Secretary for Human Development.* * * *

(19) [Revoked].

* * * * *

(22) One Special Assistant to the Commissioner, Administration for Public Service.

* * * * *

§ 213.3331 Department of Energy.

* * * * *

(l) *Office of the Assistant Secretary for Defense Programs.* * * *

(2) One Confidential Assistant (Secretary) to the Deputy Assistant Secretary for Defense Programs.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10756 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Department of the Interior

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) revokes certain positions because they have been vacant for more than 60 days, (2) changes the headnote of (m) from Bureau of Outdoor Recreation to Heritage Conservation and Recreation Service to reflect an organizational redesignation, (3) moves (a)(27) to (m) because it was erroneously listed and (4) excepts under Schedule C a position because it is confidential in nature. This amendment also corrects the title of the position listed under (h)(9) from director, Heritage Conservation and Recreation Service to Special Assistant to the Director, Heritage Conservation and Recreation Service and moves this position to (m) because it was erroneously listed under (h). Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATES: Public Information Officer—January 18, 1979; title changes and revocations—February 6, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3312(a)(27), (h)(9), (m)(3) and (m)(4) are revoked and (m)(5)(6)(7) are added as set out below:

§ 213.3312 Department of the Interior.

(a) *Office of the Secretary.* * * *

(27) [Revoked].

* * * * *

(h) *National Park Service.* * * *

(9) [Revoked].

* * * * *

(m) *Heritage Conservation and Recreation Service.* * * *

(3) [Revoked].

(4) [Revoked].

(5) One Special Assistant to the Director.

(6) One Assistant to the Director, Natural Programs.

(7) One Public Information Officer to the Director.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-10757 Filed 4-9-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; International Communication Agency

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Director of Academic Programs, Office of the Associate Director for Educational and Cultural Affairs, because the incumbent of this position will participate in policy development and policy implementation.

EFFECTIVE DATE: January 30, 1979.

FOR FURTHER INFORMATION ON POSITION AUTHORITY CONTACT: Hugh A. Strehle, Office of Personnel Management, 202–632–4625.

FOR FURTHER INFORMATION ON POSITION CONTENT CONTACT: Angelina Garcia, Assistant Director, Personnel and Training, International Communication Agency, 202–724–9631.

Accordingly, 5 CFR 213.3328(o) is added as set out below:

§ 213.3328 International Communication Agency.

* * * * *

(o) Director of Academic Programs

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-10758 4-9-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Justice, Department of Agriculture

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of Justice and the Department of Agriculture because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3310(j)(4) and 213.3313(v)(2) are amended as set out below:

§ 213.3310 Department of Justice.

* * * * *

(j) *Immigration and Naturalization Service.* * * *

(4) Three Special Assistants and one Special Assistant (Community Relations) to the Commissioner.

* * * * *

§ 213.3313 Department of Agriculture.

* * * * *

(v) *Food Safety and Quality Service.* * * *

(2) Four Confidential Assistants to the Administrator.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc 79-10759 Filed 4-9-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Merit Systems Protection Board

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) changes the title of a position from Administrative Assistant to the Vice Chairperson to Staff Assistant (Steno) to the Vice Chairperson to more appropriately reflect the duties of the position and (2) excepts under Schedule C a position because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: February 27, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3390(b) is amended and (d) is added as set out below:

§ 213.3390 Merit Systems Protection Board.

* * * * *

(b) One Policy Advisor and one Staff Assistant (Steno) to the Vice Chairperson.

* * * * *

(d) One Staff Assistant (Steno) to the Special Counsel.

(5 U.S.C. 3301, 3302; E.O.10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-10760 Filed 4-9-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of State

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Six positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses) are excepted under Schedule B because it is impracticable to hold competitive examination for them.

EFFECTIVE DATE: March 23, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3204(d) is added as follows:

§ 213.3204 Department of State.

* * * * *

(d) Six positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10761 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 213

Excepted Service; Department of Transportation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Confidential Assistant and Legislative Affairs Officer in the Office of the Administrator, Federal Aviation Administration because the position is confidential in nature.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION: On Position Authority Contact: Ronald K. Artley, Office of Personnel Management, 202–632–7676; On Position Content Contact: Thomas M. McKenna, Department of Transportation, 202–426–4122.

Accordingly, 5 CFR 213.3394(h)(12) is added as set out below:

§ 213.3394 Department of Transportation

* * * * *

(h) Federal Aviation Administration

* * *

(12) Confidential Assistant and Legislative Affairs Officer, Office of the Administrator.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

For the Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc 79–10762 Filed 4–9–79; 8:45 am]

BILLING CODE 6523–01–M

5 CFR Part 213

Excepted Service; Veterans Administration

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: This amendment shows that 100 additional positions of Rehabilitation Technician (Counselor), GS–3 through GS–11, in the Veterans Administration are excepted under Schedule A to provide for additional patient care requirements. These positions are excepted under Schedule A because examination for them is impracticable.

EFFECTIVE DATE(S): March 23, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3127(b) is amended, as follows:

§ 213.3127 Veterans Administration.

* * * * *

(b) Not to exceed 400 positions of Rehabilitation Technician (Counselor), GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc 79–10763 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Official Records; Fee Schedule

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: Parts of the fee schedule are rewritten to include changes in the size of some aerial photographic reproductions, and to include changes in fees that may be charged for these and other items of aerial photographic reproductions. The fee changes reflect changes in production costs. Since the Department no longer furnishes Landsat/Skylab imagery to the public, the rewrite deletes the entire reference to this service. Other minor changes have been made.

EFFECTIVE DATE: April 1, 1979.

FOR FURTHER INFORMATION CONTACT: Edgar J. Boyer, Fiscal Management Division, Office of Operations and Finance, USDA, Washington, D.C. 20250, Phone: (202) 447–7251.

1. Appendix A to 7 CFR, Subtitle A, Part 1 is amended as follows:

Fee Schedule

* * * * *

Sec. 16 *Photographic Reproduction Prices.*

* * * * *

c. Aerial Photographic reproductions: Black and White.

* * * * *

5. *Enlargements (Projection Prints)*

* * * * * * *

	Price Each	
	RC (Resin Coated) Base Paper	Film Positive Transparency
Size:		
12 X 12 In.	$5.00	$7.00
17 X 17 In.	6.00	8.00
24 X 24 In.	7.00	15.00
36 X 36 In.	15.00	17.00

* * * * * * *

7. *Color Aerial Photography.*

* * * * * * *

	Price Each	
	RC (Resin coated Base) Color Paper	Color Film Positive Transparency
Size:		
10 X 10 In Contact Print	$5.00	$12.00
12 X 12 In Enlargement	15.00	
20 X 20 In Enlargement	20.00	
24 X 24 In Enlargement	25.00	
38 X 38 In Enlargement	40.00	

* * * * * * *

	Price Each	
	White Opaque Base Color Print Film	Color Film Positive Transparency
Size:		
10 X 10 In	$7.00	$12.00
12 X 12 In	15.00	20.00
20 X 20 In	28.00	33.00
24 X 24 In	30.00	35.00
38 X 38 In	45.00	50.00

2. Delete Sec. 16, c 8.

3. Sec. 16, c 9 is redesignated Sec. 16, c 8.

(5 USC 301; 5 USC 552; 31 USC 483a; and 7 CFR 2.75 (a)(3)(ii).)

Note.—This Regulation has been determined not to be significant under the USDA criteria implementing Executive Order 12044.

Done at Washington, D.C., this 30th day of March, 1979.

Dean K. Crowther,

Director, Office of Operations and Finance.

[FR Doc. 79-10885 Filed 4-9-79; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Initial Apportionment of Fiscal Year 1979 Child Care Food Service Equipment Assistance Funds Pursuant to the National School Lunch Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule apportions child care food service equipment assistance funds among States in compliance with Section 17(n)(1) of the National School Lunch Act, as amended by Pub. L. 95-627.

EFFECTIVE DATE: April 3, 1979.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8211.

The appendix appearing at Part 226 is deleted and the following is added:

Appendix—Initial Apportionment of Fiscal Year 1979 Child Care Food Service Equipment Assistance Funds pursuant to the National School Lunch Act.

Pursuant to Section 17(n)(1) of the National School Lunch Act, as amended by Pub. L. 95-627, Child Care Food Service Equipment Assistance funds available for the fiscal year ending September 30, 1979, are apportioned among the States as follows:

State	Total Apportionment
Connecticut	$58,454
Maine	33,694
Massachusetts	137,408
New Hampshire	19,140
Rhode Island	22,416
Vermont	14,248
Subtotal	$285,360
Delaware	$14,858
District of Columbia	18,722
Maryland	96,912
New Jersey	174,196
New York	406,332
Pennsylvania	295,036
Virginia	131,810
Virgin Islands	4,620
West Virginia	58,912
Subtotal	$1,201,398
Alabama	$137,872
Florida	246,258
Georgia	181,402
Kentucky	108,884
Mississippi	110,366
North Carolina	162,498
South Carolina	104,372
Tennessee	136,954
Subtotal	$1,188,606
Illinois	$291,590
Indiana	127,176
Michigan	201,444
Minnesota	84,854
Ohio	309,594
Wisconsin	101,118
Subtotal	$1,115,776
Arkansas	$85,928
Louisiana	140,716
New Mexico	50,078
Oklahoma	88,172
Texas	525,236
Subtotal	$890,130
Colorado	$69,196
Iowa	58,546
Kansas	57,690
Missouri	129,932
Montana	24,336
Nebraska	42,830
North Dakota	20,636
South Dakota	23,170
Utah	51,864
Wyoming	11,018
Subtotal	$489,218
Alaska	$13,702
Arizona	92,832
California	493,892
Hawaii	38,362
Idaho	29,850
Nevada	17,032
Oregon	51,252
Trust Territory	2,184
Washington	90,406
Subtotal	$829,512
Total	$6,000,000

(Sec. 2, P.L. 95-627, 92 Stat. 3610).

The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 3, 1979.

Robert Greenstein,

Acting Administrator.

[FR Doc. 79-11243 Filed 4-9-79; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 108, 236

Asylum: Filing of Applications in Exclusion and Deportation Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking order amends the regulations of the Immigration and Naturalization Service pertaining to the filing of asylum applications. These amendments are necessary to enable aliens to file applications for asylum in exclusion and deportation proceedings. The revised rules are intended to provide alien asylum applicants the opportunity for a full evidentiary hearing on an asylum application, in exclusion or in deportation hearings, to eliminate duplication in the processing of these applications now existing under current Service procedures, and to provide a more efficient and effective procedure for the determination of the rights and status of aliens who file asylum claims.

EFFECTIVE DATE: May 10, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: This final rulemaking order amends the regulations of the Immigration and Naturalization Service pertaining to the filing of applications for asylum in exclusion proceedings and the filing of applications for asylum after deportation proceedings have either been commenced or concluded.

The proposals were set forth in two separate **Federal Register** documents. We will discuss each separately. The final rules adopted as the result of both will be set forth in this document.

Discussion of the Proposed Rules Relating to the Filing of Applications for Asylum in Exclusion Proceedings

On September 13, 1978 at 43 FR 40801, the Service published amendments to 8 CFR 108.1, 8 CFR 108.2, 8 CFR 236.3, 8 CFR 236.6, and 8 CFR 236.7 which provided for the filing of applications for asylum in exclusion proceedings before the immigration judge. These amendments were published to become effective upon publication. The notice and comment period and delayed effective date provision specified in 5 U.S.C. 553 were waived on the ground that these amendments dealt with Service procedure and provided a benefit (a full evidentiary hearing on an asylum claim in exclusion proceedings) to the aliens affected. Representatives of certain groups of aliens who would have been directly affected by the regulation filed suit to enjoin implementation of the regulations contending that the regulations were void because they did not comply with the letter of 5 U.S.C 553 as to the notice and comment and delayed effective date requirements for proposed new regulations. The Service was enjoined from placing these regulations into effect in *Sannon* v. *United States*, 460 F. Supp. 458 (1978).

The Service published an order in the **Federal Register** on October 19, 1978 at 43 FR 48620, staying the effective date and inviting public comment on these rules until December 18, 1978.

Outline of Amendments Published September 13, 1978

The amendments published September 13, 1978 at 43 FR 40801 amended 8 CFR 108.1 to provide that applications for asylum by aliens applying for admission to the United States at airports or seaports of entry should be submitted to the docket clerk for the immigration judge, for consideration in connection with an exclusion hearing, under the provisions of 8 CFR 236.3. Applications for asylum filed by crewmen, stowaways, aliens temporarily excluded under section 235(c) of the Act and aliens lawfully in the United States would be submitted to the district director.

8 CFR 236.3 was amended to provide that the asylum application could be filed by the alien for consideration in exclusion proceedings, if the applicant believed that he would be subject to persecution in the country to which he would be returned under an order of exclusion and deportation because of race, religion, nationality, membership in a particular social group or political opinion. The application was to be filed prior to the exclusion hearing; but the hearing would be adjourned for not more than 10 days to permit filing of an asylum application. 8 CFR 236.3 also provided that the alien or the Government could file a motion for summary judgment within 10 days of the filing of Form I–589. If such application was denied, or not filed, the docket clerk was to send copies of the asylum application to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, and calendar the case for a hearing to be deferred for not to exceed 30 days, pending receipt of the views of the Department of State. The reply is to be given the alien and trial attorney unless disclosure is prohibited under E.O. 11652. At the hearing the alien would have the right to present evidence on his behalf and would have the burden of showing he would be subject to persecution as claimed. This regulation also provided that excludable aliens whose asylum claims had not been presented to an immigration judge could do so by a date which was specified in the regulations.

Summary of Public Comments on 8 CFR 108.1 and 8 CFR 236.3

In response to this invitation for comment of October 19, 1978, the Service received comments from 11 legal aid societies, nonprofit organizations, and other organizations which represent the interests of aliens both in the United States and in the position of applying for admission to the United States, as well as practicing attorneys and concerned individuals with respect to these rules.

A number of comments received in connection with the proposed regulation dealt with objections to the elimination of the district director's role in determining certain asylum applications. Although some commentators clearly expressed the view that the current regulations were preferable to the proposed costly formal proceedings before an immigration judge, it is apparent from others that a two-step procedure, which could combine the district director's present role with the proposed new role of the immigration judge, is preferred. Implicit in the observations on this point is the idea that two opportunities to present the claim are better than one with respect to the determination of applications for asylum.

Closely related to objections to removal of the district director's role are several other comments expressing concern that the proposed procedure would guarantee even futher delays in the disposition of applications for political asylum. Chief among the reasons put forth for these anticipated delays are representations that immigration court calendars are already too crowded to handle the ordinary course of business expeditiously without the additional responsibility of hearing political asylum applications; experienced support personnel are not available to the immigration court compared to that available to the district director in the determination of asylum applications; the possibility of error would be increased and lengthy delays caused while the judges

themselves read the voluminous material submitted in connection with applications for political asylum; and the formalization of hearings would increase the cost of the asylum request to both the applicant and the government. The commentators suggested that the increased opportunity for error would ultimately result in a greater number of appeals to the Board of Immigration Appeals and the courts, thus prolonging litigation.

The object in revising the regulations was to provide applicants for political asylum with an evidentiary hearing. The Service is not bound to a two-step process, and the reasons set forth at 43 FR 40879 in connection with the publication of the proposed rule on asylum claims in connection with deportation proceedings with reference to avoiding duplication and providing the fullest possible opportunity to present claims still prevail. Commentators' arguments concerning the ability of the immigration judges to handle the asylum claim hearings and the increased possibility of erroneous decisions are not substantiated. There is nothing to suggest asylum applications will be treated with any less consideration or propriety by the immigration judges under the revised procedures. We regard the availability of an evidentiary hearing by an immigration judge on an asylum claim to be a step forward in the administration of the asylum regulations and in the provision of due process to aliens applying for asylum.

Another frequently voiced criticism consisted of objections to the summary judgment procedure as contained in proposed 8 CFR 236.3(a)(2). Although the proposed subsection makes the summary judgment procedure equally available to both the asylum applicant and the Service, those who criticize the provision charge that the proposed time limitation effectively deny the asylum applicant a reasonble opportunity to be heard. Critics cite as hardships the circumstances of many newly arrived applicants for asylum who face a language barrier and suffer from lack of education and limited financial resources. It is suggested that the summary judgment procedure is not only void for vagueness but that it offends basic due process.

The objections to the summary judgment provisions have merit. Upon reconsideration, this type of motion appears to be rather sophisticated given the nature of the proceedings and situation of the individuals making asylum applications in exclusion proceedings. Also, the Service notes that motions for summary judgment will lie only when there is no question of material fact. Since applications for asylum most frequently involve disputed facts a motion for summary judgment would rarely lie. Finally, deletion of the provision would not preclude an expedited decision by an immigration judge in cases which were clearly meritorious or clearly lacking in merit. Therefore, in the final rule, the proposed summary judgment provision will be deleted.

Vociferous criticism of the proposed rule was directed to the aspect of newly proposed 8 CFR 236.3(a)(2) which provides that if an applicant has not filed for asylum prior to an exclusion hearing the hearing would be adjourned for no more than 10 days to allow the alien to file an asylum application. Critics of this provision represent that it is unrealistic to assume that the difficult process of gathering the necessary information and evidence which would support an asylum claim could be completed within this brief period.

In response to this criticism, the Service points out that the commentators may well have misunderstood the provision in question. Proposed 8 CFR 236.3(a) clearly provides in its last sentence as follows:

> "If application has not been made prior to commencement of the hearing, the hearing may be adjourned for not more than ten days *to allow an application to be filed.*" (Emphasis added.)

Nowhere is it required that exhaustive and final evidence be furnished within that 10-day period; rather it would seem more reasonable to conclude that the 10-day period is for the purpose of filing an application for asylum on the Form I–589 as suggested in the opening sentence in proposed § 236.3(a)(1). However, in order to obviate any misunderstanding on this point the 10-day limitation will be deleted. In lieu thereof, the rule will be amended to provide that where the application for asylum has not been filed prior to commencement of the exclusion hearing, the immigration judge may adjourn the hearing for a period of time not to exceed 30 days, to permit the alien to submit his application.

Some commentators expressed criticism because the proposed rules do not provide a role for the United Nations High Commissioner for Refugees (UNHCR) in the evaluation of claims for asylum in exclusion proceedings.

The existing regulations concerning asylum make no provisions for referral of matters to the UNHCR. Therefore, the absence of a role for that body in these determinations does not deprive anyone of an existing right or practice. We note that it is customary in selective instances for the Department of State to consult with the UNHCR and presumably this practice will continue. Finally, the Service is opposed to delegation of its responsibilities to an agency outside the Government of the United States. Such delegation is contrary to our responsibilities set forth under the provisions of the Immigration and Nationality Act.

Other representations which were submitted for consideration objected to the 30-day time limit in § 236.3(a)(2) for deferral of hearings on asylum claims pending receipt of the views of the Department of State. It was generally suggested that the 30-day time limit allowed no leeway for the varying complexities of each case, thus denying meaningful State Department participation in the evaluation of each claim.

Although this comment suggests that this practice is a dramatic departure from current procedure, the fact is that the Department of State now operates within this time frame as to claims submitted by district directors. This is a sufficient amount of time to enable the State Department to give proper consideration to the claims referred by this service.

A number of representations expressed the criticism that the proposed regulations contain no provisions for bail or work authorization by the immigration judges in connection with asylum claims in exclusion hearings. Existing regulations provide for bond redetermination by the immigration judge. See 8 CFR 242.2(b). The district director is authorized to grant permission to accept employment under certain circumstances. See 8 CFR 242. 5(a)(3), OI 243.5 and OI 244.3. We see no need to repeat these authorities in this regulation, nor do we desire to vest the immigration judge with authority to authorize employment.

Several commentators noted the unequal treatment of applicants at land borders as opposed to those arriving at seaports or airports. Generally, these critics agreed that geographical happenstance should not be determinative of the type of hearing granted in connection with asylum claims. One commentator noted that the Commissioner's statement to the Congressional committee made no such distinction but stated simply that the fairest manner of dealing with claims of asylum would be to permit evidentiary hearings before immigration judges. It was also noted by the commentators that no hearing is provided in the

proposed regulations for crewmen, stowaways, and those excludable under sections 212(a)(27), (28), and (29) of the Act. One commentator suggested that land border applicants be permitted to file their applications for asylum with the nearest district director instead of with the nearest American Consul who may, in some instances, be several thousand miles away.

With regard to the requirement that an applicant for asylum at a land border port be referred to the nearest American Consul, we first wish to point out that this does not change existing procedure. In addition, it would be stretching the point to construe the application for asylum, standing alone, as an application for admission into the United States. Until an application for admission is made, Service officers have no jurisdiction over the case and have no alternative but to direct the individual to the consul.

With regard to the objection that crewmen cannot apply to the immigration judge for asylum, again we wish to point out that this provision does not change the existing procedure. In addition, section 235(b) of the Act specifically excepts alien crewmen from eligibility for exclusion hearings before the immigration judge should they be found inadmissible by the inspecting officer.

Stowaways are required to be kept on board the vessel under section 273(d) of the Act. Thus, they may not even attempt to enter the country unless specifically permitted to do so by the Service. However, existing procedures (OI 108.1(e) and OI 273.2) provide that should a stowaway request asylum, the facts in the case shall be communicated to the Associate Commissioner, Examinations, and consultation will be had with the Department of State, to determine the manner in which the case should be handled. The proposed rules do not change this procedure.

Section 235(c) of the Act provides that cases involving aliens who appear excludable under sections 212(a)(27), (28), or (29) of the Act shall be temporarily excluded and no further action taken in their case until after the matter is reported to the Attorney General. Under this statute, an immigration judge would be precluded from entertaining an asylum application in exclusion proceedings involving an alien who appeared excludable under the above-cited provisions of law. For that reason, these cases will continue to be heard by the district director, which is not a departure from the existing practice.

Several other commentators suggested that the asylum proceeding should be conducted separate and apart from an exclusion or deportation proceeding and be available regardless of the present immigration status of the alien. The primary reason advanced for the desirability of a separate procedure is that it would enable an alien to submit an asylum claim without having to admit excludability or deportability. At first blush, this appears to a sensible idea. However, even institution of a separate procedure would not avoid the ultimate consequences of the filing of an asylum claim. For example, if a nonimmigrant who was in status submitted an application for asylum, he would be declaring his intention not to return to the country of his foreign residence and for that reason would no longer be entitled to nonimmigrant status. We do not see how an alien is disadvantaged by filing an asylum application in exclusion or deportation proceedings. If he does not possess the proper documents necessary to enter this country, the law makes him excludable. If he has violated his immigration status or his period of admission has expired, the law makes him deportable. In either instance, the application for asylum is a form of administrative relief which would have the effect, if granted, of permitting the individual to remain in the United States. We do not find this procedure offensive. Political asylum is a special remedy which does not appear in the statutory provisions relating to excludability or deportability. While the impact of the application may be a declaration of excludability or deportability under the law, the position being urged by the applicant is that his eligibility for political asylum bars the enforcement of exclusion or deportation against him. It is our belief at this time that presentation of the asylum claim within the context of an exclusion or deportation hearing, as appropriate, is the fairest and most expeditious way to resolve the issues and grant the relief sought where applicable.

A small number of the individuals submitting comments complained that the provisions of 8 CFR 103.2(b) (2) which provide for the inspection of evidence, the opportunity to review and rebut derogatory information and which set forth the treatment of classified information have been eliminated from this rule and thus are not available to asylum applicants. Along these same lines, other commentators object to the use of nonrecord classified information by the immigration judge in deciding applications for asylum.

With regard to the first objection, it is inaccurate to state that the provisions of 8 CFR 103.2(b)(2) are not available to applicants for asylum. The provisions of 8 CFR 103.2 are available to all aliens who file any application with the Service, including an asylum application.

The second part of this objection deals with the disclosure of classified information. The Attorney General has the authority in cases such as these to base his determination on any information he has. See *United States* v. *Shaughnessy*, 206 F.2d 392 (1953) and *Namkung* v. *Boyd*, 226 F.2d 385 (1955). Some of this information is classified and it is not to be disclosed because it would be contrary to the national interest to do so. However, the regulation as to the use of nonrecord classified information does have the following safeguards for the applicant: (a) The information used must, as a matter of record, be stated to be material to the decision and (b) whenever the immigration judge can, without compromising the information and its source, he should state more specifically the general nature of the information so that the applicant may present evidence in opposition.

One of the commentators suggested that the regulations in their final form should provide that the filing of an asylum application has no influence on the applicant's general immigration status. This commentator noted that the proposed regulations contain no protection for a lawful temporary visitor, for example, because an asylum application is inconsistent with the intent required to remain in lawful status temporarily. The same problem exists with regard to a simple overstay with regard to whom no order to show cause has been issued.

In our opinion, no change is warranted in the regulations based on this reasoning. As we indicated above, a lawful temporary visitor who submits an asylum claim would, by this action, be indicating that he does not intend to return to his foreign residence. This is contrary to his nonimmigrant status. An overstay who has not been served with an order to show cause should not be immunized from proceedings by the Service. These individuals may, however, file asylum applications in deportation proceedings under the rule we will adopt in this order.

A few of the commentators have pointed out that there exists in the regulations no definition of "persecution". The courts have found the case by case method of defining persecution to be fair. Furthermore, this

approach gives the Service needed flexibility in determining whether asylum or withholding of deportation should be granted on ground of fear of persecution which works to the alien's advantage.

A few of the individuals submitting comments on the proposed regulations suggested that the regulations be delayed indefinitely while the entire issue is restudied with congressional consultation. We decline to defer publication of these regulations for that reason. These regulations are intended to modify Service procedure in accordance with the present statutory framework. Existing statutes must be implemented fairly and expeditiously, even though the Congress has the entire matter under consideration in the legislative branch. Delay of the regulations is not justified because Service operations regarding asylum claims are virtually at a standstill and further delay would be unfair to the parties involved and to the government.

One commentator pointed out that the notice to applicants who filed asylum claims prior to November, 1977 to come forward by December 31, 1978, was inadequate. This point is moot since the deadline has now passed. The date will be readjusted in the final rule. However, it should be pointed out that the cut-off date pertains only to applications which may be filed *without fee.* Of course, other applicants may come forward following that date if the proper fee is paid.

One commentator pointed out that the proposed regulations contained no requirement that persons be advised of their right to apply for asylum. There is no obligation on the part of the Service to suggest various types of relief absent specific requests by the aliens.

Proposed Rules Regarding the Filing of Asylum Requests After Commencement or Completion of Deportation Proceedings

These proposed rules were published on September 13, 1978 at 43 FR 40879. The proposal would further amend 8 CFR 108.1 and would add a new 8 CFR 108.3.

We have already discussed the proposed amendment to 8 CFR 108.1 in our discussion relating to asylum applications filed in exclusion proceedings in the preceding material. Therefore, in this part of our discussion we shall cover only the comments on the further amendment to 8 CFR 108.1 dealing with the procedure for filing asylum claims by aliens lawfully in the United States or whose presence is authorized, and others, and the comments on proposed new 8 CFR 108.3 dealing with the filing of asylum claims following commencement or completion of deportation proceedings.

Outline of the Proposed Amendments

The notice of proposed rulemaking published at 43 FR 40879 amended 8 CFR 108.1 as published at 43 FR 40801 by providing that an application for asylum by an alien maintaining lawful status in the United States, or whose presence in the United States had been authorized by the Service may be submitted to the district director. Proposed § 108.1 further provided that the sole method under which other aliens within the United States could apply for asylum would be by application for withholding of deportation under section 243(h) of the Act submitted in accordance with 8 CFR 108.3 (proposed) and 8 CFR 242.17(c).

In this notice, it was also proposed to add a new 8 CFR 108.3(a) and (b). New 8 CFR 108.3(a) provided in substance that a request for asylum filed after deportation proceedings had commenced shall be considered as a request for the withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. New proposed 8 CFR 108.3(b) provided in substance that a request for asylum by an alien or his representative following completion of a deportation hearing shall be considered as a motion to reopen the hearing pursuant to 8 CFR 103.5 or 242.22 for the purpose of submitting a request of withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention. Both subparagraphs cited the provisions of 8 CFR 242.17(c) as the regulation under which these requests were to be processed.

Discussion of Response to Proposed Rules Published September 13, 1978, at 43 FR 40879

In response to this notice of proposed rulemaking, the Service received comments from 15 legal aid societies, nonprofit organizations, and other organizations which represent the interest of aliens in the United States as well as practicing attorneys and other concerned individuals. The representations on proposed 8 CFR 108.1 will be discussed first, then we will discuss the representations submitted on proposed 8 CFR 108.3.

Representations were submitted regarding the proposed amendment to 8 CFR 108.1 asserting that the provision that an application for asylum by an alien within the United States maintaining lawful status was ambiguous because the term "lawful status" was not defined. In order to clarify this ambiguity, we will amend the final rule to specify that after the issuance of an order to show cause, the asylum application must be filed with the immigration court. Thus, an alien may file his asylum application for asylum with the district director unless orders to show cause have been issued. Thereafter, the application must be filed with the immigration court.

It was also alleged that the provision under which the application for asylum could be filed with the district director by an alien "whose presence in the United States was authorized by the Service" would lead to abuse. The reasons given by the writer were that "INS front line agents" and not district directors made decisions as to whether or not "voluntary departure" or "docket control" status should be accorded the alien authorizing his presence here. Thus the question of whether an asylum applicant can submit a petition to a district director is left to the unguided discretion of lower level Service officers. This same writer further suggested that astute lawyers would secure temporary benefits for their clients under 8 CFR 242.5 which would authorize their presence in the United States. It was asserted that denial of such requests is immediately reviewable in the U.S. District Court, and litigation and delay of the resolution of asylum claims would ensue.

We do not agree with this writer's characterization of the performance of Service officers. It is completely unsubstantiated. Additionally, any decision respecting voluntary departure or docket control status made respecting an alien by a so-called "lower echelon Service officer" is by delegated authority of the district director. Thus, under the principles of administrative law and procedure, it is the decision of the district director. The identity of the Service officer is immaterial.

Also, provision in the final regulation that the issuance of the order to show cause determines whether the asylum application is filed with the district director or immigration judge, renders nugatory the argument that temporary benefits will be sought under 8 CFR 242.5, thus prolonging litigation and the ultimate decision. the provisions of 8 CFR 242.5 apply to the granting of voluntary departure prior to the commencement of hearing. However, under our final regulation, application for benefits under 8 CFR 242.5 will not enable the asylum claim to be filed with

the district director if orders to show cause have been issued against the applicant.

Commentators objected to the provision of proposed 8 CFR 108.1 which provided that for other aliens within the United States (those who are not in lawful status or whose presence in the United States was not authorized) the sole method for applying for asylum was through application for withholding of deportation under section 243(h) of the Act. The Service will revise this provision in the final rule and provide instead that after the issuance of an order to show cause the alien must submit his application for asylum and relief under section 243(h) of the Act to the immigration court. The application for asylum, if filed on Form I–589, will be considered in accordance with 8 CFR 108.3(a) as amended in this document. The request for relief under section 243(h) of the Act will be considered under 8 CFR 242.17c).

Commentators objected generally to the provisions of proposed 8 CFR 108.3 dealing with the submission of asylum requests after the commencement or completion of deportation proceedings. Commentators object generally to the removal of the district director from this process. The effect of this new regulation will be to require an application for asylum asserted following commencement or completion of deportation proceedings to be filed in the immigration court and decided by the immigration judge. The reason the district director is being removed from the process is that once orders to show cause have been issued the matter is under the jurisdiction of the immigration judge. It is the position of the Service that it is undersirable from the point of view of administrative procedure and Service efficiency to continue the existing procedure which ousts the immigration judge of jurisdiction, allows dual jurisdiction over resolution of these claims, even after deportation proceedings have been commenced, and which permits relitigation of the claim on the same facts before the immigration judge, in the event the claim is denied by the district director. Therefore, the final regulation will provide expanded instructions for the filing of asylum claims in deportation proceedings before the immigration judge.

Commentators also objected to the elimination of the role of the Department of State in providing views regarding the likelihood of persecution of individual asylum applicants whose applications are submitted in deportation proceedings. We will amend proposed 8 CFR 108.3(a) to provide for the same Department of State consultation in deportation proceedings as is provided in connection with exclusion proceedings.

Commentators also object to the application of section 243(h) of the Act and 8 CFR 242.17(c) to the determination of requests for asylum and withholding of deportation submitted in connection with deportation hearings. it is asserted that continued application of our statute and regulations is contrary to the Convention which has the force of law and which specifies different eligibility grounds for seeking asylum and different standards for meeting the burden of proof.

With respect to the objection relating to the differences in grounds for eligibility specified in the statute versus the Convention, we point out that in this regulation the grounds for eligibility for asylum have been expanded and will be identical to those specified in the convention.

With respect to the comments objecting to the apparently differing standards of proof employed by the Service, on the one hand, and specified in the convention, on the other, it is our opinion that the objection is one of semantics. The objection concerns Service language requiring the alien to show that he would be " subject to persecution," while the Convention language refers to a "well founded fear of persecution."

As indicated in *Matter of Dunar*, 14 I&N Dec. 310 (BIA 1973), the purpose of the Service regulatory language is to require the applicant, who has the burden of proof, to substantiate that the fear of persecution is well-founded. this requirement rules out an apprehension which is purely subjective. A fear which is illusury, neurotic or paranoid, however sincere, does not meet the requirement that the fear of persecution be well-founded. Furthermore, the Ad Hoc committee of the United Nations which framed the provision stated that the expression "well-founded fear of being the victim of persecution" means that a person has either been actually a victim of persecution or can show good reason why he fears persecution. Therefore, our regulatory language requiring the applicant to adduce evidence supporting the likelihood of persecution is not in conflict with the Convention.

Finally, in this connection we wish to point out that the United States Senate in hearings and proceedings leading to ratification of the convention indicated explicitly that they did not intend adoption of the convention to modify existing immigration law in any respect.

Finally, commentators objceted to the provision set forth in 8 CFR 108.3(b) under which the asylum request filed following completion of deportation hearings will be considered a motion to reopen pursuant to 8 CFR 103.5 and 242.22. The basis for this objection is that the cited regulations require that for a motion to reopen or reconsider even to be considered, it must present new evidence not available at the time of the original hearing. it is suggested that due to the difficulty in obtaining new evidence few of these motions could or would be granted and as a result few if any hearings would be reopened for the immigration judge to consider the applications for asylum and withholding of deportation after completion of the hearing. the Service is sensitive to this difficulty and will amend 8 CFR 108.3(b) to provide that the motion for opening or reconsideration submitted after the completion of a deportation hearing will not be considered under 8 CFR 103.5 and 242.22 but may be accepted for filing provided it reasonably explains the failure to assert the asylum claim prior to completion of the deportation hearing. Asylum claims asserted on motion to reopen which are accepted by the immigration judge shall be considered in accordance with § 108.3(a) and claims for relief under section 243(h) of the Act accepted by the immigration judge on motion to reopen will be considered under 8 CFR 242.17(c).

Outline of Amendments to Proposed Rules

In light of the foregoing, the proposed rules will be amended as described and set forth below, in this final rulemaking order.

1. In the final rule, proposed 8 CFR 108.1 will be amended by adding a clause to the fifth sentence to provide that an alien paroled into the United States under section 212(d)(5) of the Act may only apply for asylum in the exclusion proceedings before the immigration judge under 8 CFR 236.3. The reason for this is that an alien who is a parolee may be excludable. The question of an alien's excludability must be decided by an immigration judge in exclusion proceedings.

Proposed 8 CFR 108.1 will also be amended by deleting the sentence which states that the sole method for applying asylum for other aliens in the United States shall be by application for withholding of deportation under section 243(h) of the Act. We will substitute for that sentence, a sentence which provides that after orders to show cause

have been issued, the asylum application and request for relief under section 243(h) of the Act must be submitted to the immigration court. This amendment is being made to clarify any ambiguity as to when an asylum application may be filed with the district directors, on the one hand, and with the immigration court, on the other.

2. Proposed 8 CFR 108.3(a) will be completely revised to set forth detailed instructions for the processing of asylum claims filed before the immigration judge in deportation proceedings. This amended provision will be identical in all material respects with the provisions pertaining to the handling of asylum claims in exclusion proceedings, as set forth in 8 CFR 236.3. Provision will be made for referral of claims to the Department of State, the use of classified and nonrecord classified information, the burden of proof which must be met by the applicant, and the grounds which may be asserted in claiming eligibility for asylum, which are identical to those indicated in the Convention Relating to the Status of Refugees.

3. Proposed 8 CFR 108.3(b) will be revised to delete the requirement that a request for asylum filed after completion of deportation proceedings which is considered a motion to reopen, must comply with 8 CFR 103.5 and 242.22. Instead, the rule will provide that the motion may be accepted if accompanied by a reasonable explanation of the failure to assert the asylum claim prior to completion of the hearing.

4. Proposed 8 CFR 236.3(a)(1) will be revised by deleting the requirement that the exclusion hearing may be adjourned for not more than 10 days to allow an application for asylum to be filed. Instead, the provision will be amended to provide that the hearing may be adjourned by the immigration judge for a period of time not to exceed 30 days, to permit the application to be filed. This amendment will afford applicants ample time to prepare and present a more complete application.

5. Proposed 8 CFR 236.3(a)(2) will be amended by deleting the portion of the proposed rule relating to the summary judgment procedure. Subparagraph (2) will be deleted as an individual subparagraph and the material remaining therein will be combined and made part of 8 CFR 236.3(a)(1).

6. Proposed 8 CFR 236.3(a)(3) will be adopted without change, but redesignated as 8 CFR 236.3(a)(2).

7. 8 CFR 236.3(b) will be revised by changing the date set forth in the proposal from December 31, 1978 to August 10, 1979.

Final Rules Adopted

The following amendments are hereby prescribed in Chapter I of Title 8 of the Code of Federal Regulations:

PART 108—ASYLUM

1. In Part 108, § 108.1 is hereby revised to read as follows:

§ 108.1 Application.

An applicant who is seeking admission to the United States at a land border port or preclearance station who wishes to apply for asylum shall be referred to the nearest American consul. In all other cases, application for asylum shall be submitted on Form I–589, "Request for Asylum in the United States." Except as otherwise provided in this paragraph, an application for asylum by an alien who is applying for admission to the United States at an airport or seaport of entry shall be submitted to the docket clerk for the immigration judge who shall consider that application in connection with an exclusion hearing as provided in § 236.3 of this chapter. A crewman or stowaway or alien temporarily excluded pursuant to section 235(c) of the Act who is at a seaport or airport shall submit his application for asylum to the district director. An application for asylum by an alien who is within the United States and who is maintaining a lawful status or whose presence in the United States is authorized by the Service may be submitted to the district director having jurisdiction over his place of residence in the United States, except that an alien who has been paroled into the United States under section 212(d)(5) of the Act may only apply for asylum as provided in § 236.3 of this chapter. After an order to show cause has been issued, the application for asylum and relief under section 243(h) of the Act must be submitted to the immigration court. The application for asylum if filed on Form I–589 will considered in accordance with § 108.3(a). The request for relief under section 243(h) of the Act will be considered under § 242.17(c) of this chapter. The applicant's spouse and unmarried children under the age of 18 years may be included in the application.

2. The title of § 108.2 is revised to read as follows:

§ 108.2 Decisions by the district director.

* * * * *

3. New § 108.3 is added to read as follows:

§ 108.3 Asylum requests after commencement or completion of deportation proceedings.

(a) *Asylum requests after proceedings have been commenced.* A request for asylum introduced by an alien or his representative after commencement of deportation proceedings shall be considered as a request for withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. The request for withholding of deportation under section 243(h) shall be considered under the procedures described in § 242.17(c) of this chapter. A request for asylum under the Convention shall be filed on Form I–589 in quadruplicate with the docket clerk for the immigration court. Upon receipt, the docket clerk shall send two copies of Form I–589 with supporting evidence to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State. If an application for asylum is filed on Form I–589, the hearing shall be adjourned for a period not to exceed 30 days pending receipt of the Department of State's views. The reply, if any, from the Department of State, unless classified under Executive Order No. 11652 (37 FR 5209, March 19, 1972), as requiring protection from unauthorized disclosure in the interest of national security shall be given by the docket clerk to the alien and to the trial attorney. When the hearing resumes, the alien shall be examined under oath on his asylum application, and may present evidence on his behalf. The applicant for asylum has the burden of satisfying the immigration judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, as claimed. The trial attorney may also present evidence for the record, and may submit information not of record to be considered by the immigration judge provided that such information is classified under Executive Order No. 11652 and that the immigration judge or the Board has determined that such information is relevant. When the immigration judge receives such nonrecord information he shall inform the applicant thereof and shall also inform him whether it concerns conditions generally in a specified country or the applicant himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the immigration judge should state more specifically the general nature of the information in order that the applicant

may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(b) *Asylum requests after completion of deportation hearing.* A request for asylum introduced by an alien or his representative following completion of a deportation hearing shall be considered as a motion to reopen the hearing for the purpose of submitting a request for withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. Notwithstanding the provisions of §§ 103.5 and 242.22 of this chapter, a request for asylum may be considered as a motion to reopen under this paragraph and accepted for filing provided it reasonably explains the failure to assert the asylum claim prior to completion of the deportation hearing. If the motion does not reasonably explain such failure, the claim for asylum will be considered to be spurious and dilatory, absent evidence to the contrary. The asylum claim shall be considered in accordance with § 108.3 (a). A chaim for relief under section 243 (c) of the Act shall be considered in accordance with § 242.17(c) of this chapter.

PART 236—EXCLUSION OF ALIENS

4. A new § 236.3 is added to read as follows:

§ 236.3 Application for asylum.

(a) *Applications on and after November 1, 1977.* (1) An alien subject to exclusion proceedings under this part who believes that he would be subject to persecution in the country to which he would be returned under an order of exclusion and deportation because of race, religion, nationality, membership in a particular social group, or political opinion may apply for asylum on Form I–589 Four copies of such application shall be submitted to the docket clerk for the immigration court before an exclusion hearing is commenced. If application has not been made prior to commencement of the hearing, the hearing may be adjourned by the immigration judge for a period of time not to exceed 30 days to permit the application to be filed. Upon receipt of the Form I–589, the docket clerk shall send two copies of Form I–589 with supporting evidence to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, and shall calendar the case for hearing, which shall be deferred for a period not to exceed 30 days pending receipt of the Department of State's views. The reply, if any, from the Department of State, unless classified under Executive Order No. 11652 (37 FR 5209, March 19, 1972), as requiring protection from unauthorized disclosure in the interest of national security shall be given by the docket clerk to the alien and to the trial attorney.

(2) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence on his behalf. The applicant has the burden of satisfying the Immigration Judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion as claimed. The Trial Attorney may also present evidence for the record, and may submit information not of record to be considered by the Immigration Judge provided that such information is classified under Executive Order No. 11652 and that the Immigration Judge or the Board has determined that such information is relevant. When the Immigration Judge receives such nonrecord information he shall inform the applicant thereof and shall also inform him whether it concerns conditions generally in a specified country or the applicant himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the Immigration Judge should state more specifically the general nature of the information in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision. An alien seeking admission to the United States at a land border port will be processed in accordance with the provisions of § 108.1 of this chapter.

(b) *Applications prior to November 1, 1977.* Any person under a pending order of exclusion and deportation who prior to November 1, 1977, has submitted an application for asylum which was denied by a district director but was not considered by an Immigration Judge may, prior to August 10, 1979, submit a motion to reopen the exclusion proceedings, without fee, to have such application decided by an Immigration Judge in accordance with paragraph (a) of this section.

5. The third sentence of § 236.6 is amended to read as follows:

§ 236.6 Finality of order.

* * * When the order of the Immigration Judge is to admit the applicant, or to grant asylum by parole under section 212(d)(5) of the Immigration and Nationality Act, or to grant the application for adjustment under the conditions specified in § 245.2(a) of this chapter, the Immigration Judge shall place the applicant on notice that the decision is subject to appeal by the district director as provided in § 236.7(c).

6. The first sentence of § 236.7(c) is amended as set forth below:

§ 236.7 Appeals.

* * * * *

(c) *By district director.* The district director may, within five days from date of decision, appeal from an order of the Immigration Judge to admit the applicant, or to grant asylum, or to grant the application for adjustment.* * *

* * * * *

(Sec. 103; 8 U.S.C. 1103; Interpret or apply sec. 212(d)(5) and sec. 236 [8 U.S.C. 1182(d)(5) and 1226])

Effective date: The amendments contained in this order become effective on May 10, 1979.

Dated: April 4, 1979.

Leonel J. Castillo,
Commissioner of Immigration and Naturalization.

[FR Doc. 79–10968 Filed 4–9–79; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Orange County in California from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Orange County in California from the areas

quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a)(1), relating to the State of California, paragraph (v) relating to Orange County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the Federal Register.

Done at Washington, D.C., this 5th day of April 1979.

Note.—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of the release of this quarantine, as indicated above, warrants the publication of this document without waiting for public comment. This amendment, as well as the complete regulation, will be scheduled for review under provisions of E. O. 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

E. A. Schilf,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-10969 Filed 4-9-79; 8:45]

BILLING CODE 3410-34-M

TREASURY DEPARTMENT

Customs Service

19 CFR Part 159

Cheese From Austria—Revocation of Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Revocation of Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that the countervailing duty determination on cheese from Austria is being revoked because the subsidies paid to exporters and for producers of this merchandise have been eliminated and there is no likelihood of resumption.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566–2323.

SUPPLEMENTARY INFORMATION: A notice entitled "Countervailing Duties—Cheese from Austria," T.D. 76–10, was published in the Federal Register of January 7, 1976 (41 FR 1274). The notice stated that it had been determined that producers and/or exporters of cheese from Austria received benefits which constituted the payment or bestowal of bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) by virtue of two programs of the Government of Austria, namely a price support system for soft cheese and direct export subsidies for hard cheese. Accordingly, imports of cheese from Austria were subject to countervailing duties.

Concurrent with the above determination, a notice entitled "Waiver of Countervailing Duties", T.D. 76–11, concerning the subject merchandise was published in the Federal Register (41 FR 1275).

In accordance with the terms of the waiver, the Government of Austria has eliminated the subsidies given to producers and/or exporters of hard cheese. Furthermore, Treasury has been informed that the Government of Austria has ceased all support payments to dairy products that would be exported to the United States. While the Government of Austria maintains milk support payments, these payments are made only for home market sales. Accordingly, it is determined that a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), is no longer being paid or bestowed upon the manufacture, production or exportation of cheese from Austria, and there is no likelihood of resumption of the payment or bestowal of a bounty or grant on such merchandise.

T.D. 76–10 is hereby revoked with respect to all entries of dutiable cheese from Austria which have not been liquidated, or the liquidation of which has not become final, on or after April 10, 1979. Customs officers will be instructed to proceed with liquidation of all such entries without regard to countervailing duties.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by deleting from the column headed "Country" the name "Austria"; from the column headed "Commodity" the word "Cheese"; from the column headed "Treasury Decision", the numbers "76–10" and "76–11"; and from the column headed "Action", the words "Bounty declared-rate" and "Imposition of countervailing duties waived." (R.S. 251, sections 303, as amended, 624, 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, Revision 15, March 16, 1978, the provision of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a revocation order by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.

April 3, 1979.

[T.D. 79-110]

[FR Doc. 79-11071 Filed 4-9-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 520

New Animal Drugs; Febantel Paste

Correction

In FR Doc. 78–35909 appearing at page 60882 in the issue for Friday, December

29, 1978, the effective date given both in the preamble and at the end of the document now reading "December 29, 1979" should have read "December 29, 1978."

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

Delegating Increased Settlement Authority to Assistant Attorneys General; CFR Correction

In Title 28, revised as of July 1, 1978, on page 54, the introductory text of § 0.160 is corrected to read as follows:

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

Each Assistant Attorney General is authorized with respect to matters assigned to his division, to accept offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $250,000 or 10 percent of the original claim, whichever is greater, and of claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $500,000 except:

* * * * *

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Air Quality Control Regions, Criteria, and Control Techniques; Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking responds to comments and makes necessary amendments to the designations of attainment status relative to the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) and total suspended particulates (TSP) that were promulgated for Arizona on March 3, 1978 (43 FR 8962). In addition to this rulemaking, a notice of proposed rulemaking is being prepared for the TSP designation in Morenci, Arizona that EPA is proposing to change to nonattainment.

DATES: Effective immediately.

ADDRESS: Comments on this rulemaking should be directed to: Arnold Den, Chief, Air Technical Branch, EPA Region IX, 215 Fremont Street (A-4), San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Charlotte Hopper, Acting Chief, Technical Analysis Section, EPA Region IX, Phone: (415) 556-2002.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 (the 1977 Amendments), Pub. L. 95-95, added Section 107(d) to the Clean Air Act (the Act) which directed each State to submit to the Administrator a list of the NAAQS attainment status of all areas within the State. The Administrator was required under Section 107(d)(2) to promulgate the State lists, with any necessary modifications. For each NAAQS, areas are classified as either not attaining the standard or, for certain pollutants, projected not to maintain the standard (nonattainment areas), meeting the standard (attainment areas), or lacking sufficient data or information to be classified (unclassified areas). The Environmental Protection Agency (EPA or the Agency) published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962).

Attainment status designations for Arizona were prepared and promulgated by EPA because the State of Arizona did not submit its designations to EPA by the deadline required for publication by March 3, 1978 nor by the date established in the Act. During this period, the State held public meetings to obtain local and regional input to the designation process. The State subsequently submitted attainment status designations to EPA on August 15, 1978. This rulemaking addresses only the SO_2 and TSP designations submitted by the State. The designations for carbon monoxide, photochemical oxidants, and nitrogen dioxide in Arizona, as well as the designations for all five criteria pollutants in the other states in Region IX were addresed in a recent final rulemaking and a notice of proposed rulemaking.

The SO_2 and TSP designations prepared and promulgated for Arizona by EPA on March 3 were made on a countywide basis, in keeping with Agency policy. If NAAQS violations were recorded anywhere in the county, EPA designated the entire county nonattainment, and the fugitive dust policy was not considered in the original TSP designations. In the State of Arizona's submittal of August 1978, designations were made on the basis of subcounty areas which is acceptable under section 107(d). In this rulemaking, EPA has approved the State's boundary designations, with the result that many nonattainment areas have been reduced from entire counties to subcounties which encompass the population and source-oriented areas. Those areas designated nonattainment on March 3, 1978 and reaffirmed as nonattainment in this rulemaking remain under the requirements of Part D of the Act. A state implementation plan revision (nonattainment plan) must be adopted by the State of Arizona and approved by EPA by July 1, 1979.

Sulfur Dioxide (SO_2)

The State of Arizona has designated the following six areas of the State as nonattainment (primary) for SO_2: Ajo, Douglas, Hayden, Miami, Morenci, and San Manuel. These six areas contain all of the major point sources which contribute to monitored SO_2 violations. Additional areas near each of these nonattainment areas have been designated unclassified by the State because of insufficient air quality data. The remainder of the State has be designated attainment based on air quality data. The State identified the boundaries of the nonattainment and unclassified areas on the basis of one or more townships, or portions thereof. Townships are nominally squares measuring six miles on a side. The description of each area and its designation is listed in the table following this notice. EPA has reviewed the State of Arizona's nonattainment and unclassified SO_2 designations and concurs with them based on a review of the air quality data.

The State of Arizona designated Coconino County attainment for SO_2. On March 3, 1978, EPA designated the County unclassified pending the promulgation of the stack height regulations implementing section 123 of the Clean Air Act. The SO_2 designation of the Page area within Coconino County, including the Navajo power plant, may be affected by these forthcoming regulations. In the interim, the SO_2 designation of the Page area which encompasses township T41N, R9E, will remain unclassified. The State's attainment designation for the remainder of Coconino County and the remainder of the State is acceptable since no violations of SO_2 standards have been recorded in these areas. The State's SO_2 designations, except for Page, replace those promulgated by EPA on March 3, 1978.

Total Suspended Particulates (TSP)

The State of Arizona designated 19 areas unclassified for TSP and the

remainder of Arizona attainment. The EPA's review indicates that the State did not provide adequate documentation to support their TSP designations and that some of the designations were not made in accordance with the requirements of Section 107(d) of the Clean Air Act. Specifically, areas with air quality data recording TSP violations that should have been designated nonattainment were, in fact, designated unclassified or attainment by the State. Consequently, some of the State's designations have been modified as described below.

Under EPA's fugitive dust policy, as described in the March 3, 1978 (43 FR 8962) rulemaking, any rural areas experiencing TSP violations that could be attributed to fugitive dust could be designated attainment with respect to the TSP NAAQS. Rural areas for this purpose are defined as those that have: (1) A lack of major industrial development or the absence of significant industrial particulate emissions, and (2) low urbanized population densities. In this rulemaking, an area containing less than 50,000 population and with no major industrial development is considered to be rural. For this purpose major industrial development is defined as an industrial source in a category listed in the Prevention of Significant Deterioration regulations (40 CFR 52.21) with actual emissions of more than 100 tons per year or an industrial source in any other source category with actual particulate emissions of greater than 250 tons per year. Because the State of Arizona failed to properly designate areas with respect to TSP, EPA has modified certain of the designations to conform to the Clean Air Act and EPA's fugitive dust policy. Descriptions of the TSP areas are provided in the table following this notice.

The State of Arizona designated the Phoenix and Tucson areas as unclassified for TSP. A review of the air quality data shows violations of the primary TSP standards in both areas. Because of the recorded violations of the TSP standards, EPA does not accept the State's unclassified designation but retains the nonattainment designations promulgated by EPA on March 3, 1978. The boundaries defined by the State, which encompass the Phoenix and Tucson urban areas and contain major industrial development and sources of significant industrial particulate emissions, are acceptable.

The State of Arizona designated seven areas surrounding major stationary sources of particulate emissions as unclassified. The areas are Ajo, Douglas, Hayden, Miami (copper smelters), Joseph City, Page (power plants), and Paul Spur (lime plant). A review of the air quality data shows that each area has recorded violations of the TSP primary standards. Because of the violations, EPA does not accept the State's unclassified designations but retains the nonattainment designations promulgated by EPA on March 3, 1978. However, the major stationary sources of particulate emissions are located within the State's designated boundaries and EPA affirms those boundaries for each of the seven areas.

The State of Arizona designated ten other areas as unclassified for TSP. They are Casa Grande, Flagstaff, Florence, Mohave Valley, Nogales, Parker, Safford, Show Low, Superior, and Yuma. A review of the air quality data shows that violations of the TSP standards have been recorded in each area. However, each area can be designated attainment based on EPA's fugitive dust policy which considers low population and lack of major industrial development or the absence of significant industrial particulate emissions. Based on this consideration, EPA accepts the State's boundaries but revises the designation of each of the areas to attainment.

The San Manuel area of Pinal County has been designated attainment for TSP by the State of Arizona. No violations of the TSP NAAQS have been recorded in the area in recent years. However, preliminary air pollution dispersion modeling performed by EPA projects a violation of the 24-hour secondary TSP standard caused by the major stationary source of particulate emissions at San Manuel. The modeling also indicates that no monitors are located in the area of estimated maximum TSP concentration. Until sufficient information concerning the area's attainment status becomes available, EPA designates San Manuel unclassified for TSP.

Based on air quality data from a State operated air quality monitoring station, Morenci, Greenlee County, was designated attainment for TSP by EPA on March 3, 1978 and by the State of Arizona in their August 1978 submittal. However, a review of air quality data shows numerous violations of the TSP standards at several monitoring stations operated by the owner of the copper smelter at Morenci. The smelter is a source of significant industrial particulate emissions and because of the air quality data, EPA is proposing to revise the TSP designations of the Morenci area to nonattainment. Because Morenci was originally designated attainment by EPA, a separate notice of proposed rulemaking is being developed to consider the possible redesignation. Public comments will be solicited, particularly concerning the validity of the air monitoring data from the Morenci area.

Except for the 19 areas designated as unclassified for TSP, the rest of Arizona was designated attainment by the State of Arizona in their submittal of August, 1978. With the exception of the designations described in the preceeding paragraphs, EPA affirms the TSP attainment designation for the remainder of Arizona. The attainment designation is supported either by monitoring data or fugitive dust considerations in areas lacking major industrial development or significant industrial particulate emissions and with low population densities. The TSP designations promulgated in the table following this notice replace those promulgated by EPA on March 3, 1978.

Several public comments were received during the comment period following the March 3, 1978 promulgation of attainment status designations. Those relevant comments received by EPA concerning the designations of TSP and SO_2 in Arizona are summarized below.

Several commenters questioned the boundaries for the designated areas. Some suggested larger areas, and others suggested smaller areas. The State, on August 15, 1978, chose to designate the boundaries such that the sources contributing to air quality problems were contained within the designated areas. For the air quality planning purposes of these section 107(d) designations, the boundaries are sufficient to provide for control strategies that will insure attainment of the NAAQS and are therefore acceptable.

One commenter questioned the air quality monitoring data used to support a TSP nonattainment designation for the Tucson area. The designation is supported by violations at numerous monitoring sites. While there are provisions for adjusting air quality data to account for unusual phenomena (40 CFR 51.12(d)), the commenter did not provide sufficient technical information to support a revision in the current designation.

One commenter recommended that Phoenix, Tucson, Flagstaff, and Yuma be designated nonattainment for TSP until it can be demonstrated that violations were not caused by human activity. Violations of the TSP standards have been recorded in each of the four cities and the Phoenix and Tucson areas have

been designated nonattainment. Flagstaff and Yuma, however, have been designated attainment based on EPA's fugitive dust considerations (low population and lack of major industrial development or significant industrial particulate emissions).

Two commenters argued that it would be inconsistent to include an area classified Class I under the Agency's Prevention of Significant Deterioration (PSD) program in an area designated nonattainment under section 107 of the Act.

Under section 162 of the Act, Congress provided that certain areas of the country, because of their recreational or conservational value, should be designated Class I regardless of their present air quality. This does not mean that these areas could not be designated nonattainment under section 107 of the Act. This situation would occur if the air quality in the Class I area is worse than the national ambient air standards or if the Class I area is a clean air pocket within a larger area designated nonattainment. In either case, the existence of a Class I area within a nonattainment area does not mean that the Class I area will lose the protection of the PSD program. If a Class I area could not be designated nonattainment because of air quality violations, then the Act could not require States to revise their implementation plans to insure attainment of the NAAQS in such areas. This is not the case, however, because in this instance the nonattainment and PSD programs work independently, and an area can be both Class I and nonattainment at the same time.

To have any designation amended, a person should submit a petition with supporting data and analysis to the State, with a copy to the EPA Region IX Office at the location given in the ADDRESS section of this rulemaking. If the person is not satisfied with the State's response to the petition, he may then petition the EPA Region IX Office to modify the current designation.

Note.—The Environmental Protection Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Authority: Sections 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)).

Dated: April 2, 1979.

Douglas M. Costle,
Administrator.

Arizona—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Ajo:				
T11S, R6W	X			
T11S, R5W	X			
T12S, R6W	X			
T12S, R5W	X			
T13S, R6W	X			
T11S, R7W			X	
T12S, R7W			X	
T13S, R7W			X	
T13S, R5W			X	
Douglas:				
T23S, R27E	X			
T24S, R27E	X			
T24S, R28E	X			
T23S, R26E			X	
T23S, R28E			X	
T24S, R26E			X	
Hayden:				
T4S, R14E	X			
T4S, R15E	X			
T4S, R16E	X			
T5S, R14E	X			
T5S, R15E	X			
T5S, R16E	X			
T6S, R14E	X			
T6S, R15E	X			
T6S, R16E	X			
T4S, R13E			X	
T4S, R17E			X	
T5S, R13E			X	
T5S, R17E			X	
T6S, R13E			X	
T6S, R17E			X	
Miami:				
T2N, R14E	X			
T2N, R15E	X			
T1N, R13E [1]	X			
T1N, R14E	X			
T1N, R15E	X			
T1N, R16E	X			
T1S, R14E [1]	X			
T1S, R14½E	X			
T1S, R15E	X			
T2N, R13E [1]			X	
T2N, R16E			X	
T1S, R13E [1]			X	
T1S, R16E			X	
T2S, R14E [1]			X	
T2S, R15E			X	
Morenci:				
T3S, R28E [2]	X			
T3S, R29E	X			
T3S, R30E	X			
T4S, R28E [3]	X			
T4S, R29E	X			
T4S, R30E	X			
T5S, R28E [4]	X			

Arizona—SO ₂—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
T5S, R29E [1]	X			
T5S, R30E			X	
San Manuel:				
T8S, R16E	X			
T8S, R17E	X			
T8S, R18E	X			
T9S, R15E	X			
T9S, R16E	X			
T9S, R17E	X			
T9S, R18E	X			
T10S, R15E	X			
T10S, R16E	X			
T10S, R17E	X			
T11S, R16E	X			
T10S, R18E			X	
T11S, R17E			X	
T12S, R16E			X	
T12S, R17E			X	
Page:				
T41N, R9E			[3]X	
Rest of State				X
Ajo:				
T12S, R6W	[3]X			
Douglas:				
T24S, R27E	[3]X			
T24S, R28E	[3]X			
Hayden:				
T5S, R15E	[3]X			
Joseph City:				
T18N, R19E	[3]X			
Miami:				
T1N, R15E	[3]X			
Page:				
T41N, R9E	[3]X			
Paul Spur:				
T24S, R26E	[3]X			
Phoenix: That portion of Maricopa County known as the Maricopa association of Governments (MAG) Urban Planning Area	[3]X			
Tucson: That portion within Pima County of the area described by connecting the following geographical coordinates moving in a clockwise manner:				
LAT(N) and LON(W):				
32°36.5' 111°24.0'				
32°26.5' 110°47.5'				
32°12.5' 110°32.5'				
31°49.5' 110°25.5'				
31°42.0' 110°50.5'				
31°52.5' 111°12.5'				
32°24.5' 111°29.0'	[3]X			
San Manuel:				
T10S, R17E			[3]X	
T10S, R16E			[3]X	
Rest of State				[3]X

[1] Only that portion in Gila County.
[2] Only that portion in Greenlee County.
[3] EPA designation replaces State designation.

[FRL 1095-7]
[FR Doc. 79-11010 Filed 4-9-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

41 CFR Part 3-2

Procurement by Formal Advertising

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the Departmental procurement regulations to reflect revisions to Part 3-2, Procurement by Formal Advertising.

In the section concerning mistakes in bids, amendments are being made to clarify recent delegated authorities concerning administrative determinations and to cancel and reserve those portions which restate, verbatim, what is in the Federal Procurement Regulations. Under the section concerning protests against award, amendments are being made to require that timely written confirmation of all oral protests filed with the Department are obtained, to extend the period for filing protests with the Department from five to ten Federal Government working days to coincide with the General Accounting Office's timeliness requirement, to clarify the timely filing of protests which result from amendments to solicitations, and to recognize the discretion allowed contracting officers in making determinations to resolve protests filed at the contracting officer level.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, HEW, Washington, D.C. 20201 (202-245-6347).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the amendments primarily concern internal administrative procedures and, to the extent that they affect the public, liberalize previous procedures, the public rulemaking process was deemed unnecessary in this instance. The provisions of these amendments are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: March 28, 1979.

E. T. Rhodes,
Deputy Assistant Secretary for Grants and Procurement.

Under Subpart 3-2.4, Opening of Bids and Award of Contract, of Part 3-2, Procurement by Formal Advertising, sections 3-2.406-3, Other mistakes disclosed before award, 3-2.406-4, Disclosure of mistakes after award, and 3-2.407-8, Protests against award, are cancelled, and the sections indicated in the table of contents and following text are substituted:

Subpart 3-2.4—Opening of Bids and Award of Contract

Sec.

* * * * *

3-2.406 Mistakes in bids.
3-2.406-3 Other mistakes disclosed before award.
3-2.406-4 Disclosure of mistakes after award.
3-2.407 Award.
3-2.407-8 Protests against award.

Authority. 5 U.S.C. 301, 40 U.S.C 486(c).

* * * * *

§ 3-2.406 Mistakes in bids.

§ 3-2.406-3 Other mistakes disclosed before award.

(a) Circumstances permitting the correction or withdrawal of bids are set forth in § 1-2.406-3.

(b) Authority has been delegated to the Director, Division of Procurement Policy and Regulations Development,

OGP, OASMB, OS, to make administrative determinations in connection with mistakes in bid alleged after opening of bids and before award. This authority may not be redelegated.

(c) Each administrative determination shall be approved by the Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel, OS.

(d) (1) and (2) [Reserved.]

(3) The data required by § 1–2.406–3(d)(3) will be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted, in duplicate, in the most expeditious manner, through procurement channels to the Director, Division of Procurement Policy and Regulations Development for evaluation and administrative determination. The file shall be assembled in an orderly manner and include an index of enclosures.

(4) Since examination of evidence is necessary to determine the proper course of action to be taken, no action will be taken on cases referred by telephone or telegraph.

(5) [Reserved.]

(6) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate his efforts to obtain clear and convincing evidence to support the alleged mistake.

(e) Doubtful mistakes in bid shall not be submitted by contracting officers directly to the Comptroller General for advance decisions, but shall be submitted as indicated in paragraph (d)(3) of this section.

§ 3–2.406–4 Disclosure of mistakes after award.

(a)–(c) [Reserved.]

(d) Authority to make administrative determinations in connection with mistakes in bid disclosed after award has been delegated to the Director, Division of Procurement Policy and Regulations Development, OGP, OASMB, OS.

(e) Each determination shall be approved by the Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel, OS.

§ 3–2.407 Award.

§ 3–2.407–8 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner. As used in this subsection, the term "filed" means receipt in the contracting office, the Office of the Secretary, or the General Accounting Office as the case may be. In order to be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated procurements, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. If a protest has been filed initially with the contracting officer, any subsequent protest to the Secretary, Department of Health, Education, and Welfare or the General Accounting Office filed within ten (10) Federal Government working days of notification of adverse action will be considered provided the initial protest to the contracting officer was timely. Written confirmation of all oral protests shall be requested from protestants and must be timely filed. The protestant shall be notified in writing of the final decision on the protest, and the notification shall set forth the rationale upon which the decision is based.

(2) Reports concerning protests, whether before or after award, shall include the following documentation:

(i) A statement by the procuring activity's headquarters procurement staff office, containing its recommendation, with supporting reasons, as to the merits of the protest.

(ii) The contracting officer's statement of facts and circumstances including a discussion of the merits.

(iii) The contracting officer's conclusions and recommendations including documentary evidence on which they are based.

(iv) A copy of the IFB or RFP.

(v) A copy of the abstract of bids or proposals.

(vi) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(vii) A copy of the bid or proposal of the protestant, if any.

(viii) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(ix) A copy of any mutual agreement to suspend work on a no-cost basis when appropriate (See § 1–2.407–8(c)).

(x) Copies of the notice of protest given offerors and other parties when the notice is appropriate (See § 1–2.407–8(a)(3)).

(xi) A copy of the technical evaluation report required by § 3–3.5104, when applicable, and a copy of each evaluator's rating for all proposals.

(xii) A copy of the negotiation memorandum when applicable (See § 3–50.301).

(xiii) Any other documents which are relevant to the protest.

(xiv) The name and telephone number of the person in the procurement office who may be contacted for information relevant to the protest.

The file shall be assembled in an orderly manner and shall include an index of enclosures.

(3) Copies of the views of interested parties submitted pursuant to § 1–2.407–8(a)(3) shall be furnished to the Departmental Protest Control Officer, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB, OS, whenever the protest is reviewed by the Departmental Protest Control Officer (including protests lodged with GAO).

(4) Whenever the contracting officer deems it desirable to obtain the views of higher authority or when submission is required by paragraph (b)(2) of this section, the file shall be forwarded, in duplicate, through procurement channels to the procuring activity's cognizant protest control officer (See paragraph (6), below) and then to the Departmental Protest Control Officer, by the most expeditious means. The file shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD".

(5) The Division of Procurement Policy and Regulations Development has been designated as the headquarters office which GAO should contact concerning protests. All reports on protests lodged with GAO shall be submitted to that office.

(6) Each procuring activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior procurement specialist in the headquarters procurement office staff. In addition, procuring activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers

shall be forwarded to the Director, Division of Procurement Policy and Regulations Development, OGP, OASMB, OS.

(b) *Protest before award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) In the following cases, written protests received by the contracting officer shall be forwarded, through procurement channels, to the Departmental Protest Control Officer. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means and shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD":

(i) The protestant requests referral to the Secretary of Health, Education, and Welfare;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary;

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submission of protests to the Departmental Protest Control Officer may be dispensed with by the contracting officer if he is satisfied that the protest is without any reasonable degree of foundation. Except as modified in § 1–2.407–8(b)(3) and paragraph (b)(3) of this section, the contracting officer, with the concurrence of the procuring activity's protest control officer, and either the Office of General Counsel, Business and Administrative Law Division, or cognizant Regional Attorney, may disallow the protest.

(3) When it is known that a protest against the making of an award has been lodged directly with GAO, a determination to make award under § 1–2.407–8(b)(4) must be approved by the Director, Division of Procurement Policy and Regulations Development.

(4) If award is made pursuant to § 1–2.407–8(b)(4), the contracting officer shall document the file to explain the need for immediate award and shall notify the protestant and, as appropriate, others concerned, except GAO. Notice will be given to GAO by the Division of Procurement Policy and Regulations Development.

(c) *Protests after award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) Protests submitted to the Secretary shall be forwarded, through procurement channels, to the Departmental Protest Control Officer and documented in accordance with paragraph (a)(2) of this section. The file shall be submitted, in duplicate, by the most expeditious means and shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD."

[FR Doc. 79–11069 Filed 4–9–79; 8:45 am]

BILLING CODE 4110–12–M

41 CFR Part 3–6

Foreign Purchases

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the Departmental procurement regulations to add a section concerning the use of local currencies when making contract payments or reimbursements in foreign countries.

The amendment is based upon actions by the Treasury Department and Office of Management and Budget regarding the U.S. balance of payments program. The Treasury Department periodically determines that the U.S. supply of currencies from certain foreign countries is considered excessive or nearly excessive to normal requirements. As a result, the Office of Management and Budget directed Federal agencies to establish policies and procedures to ensure that contracts and other obligations incurred in foreign countries having currencies declared as "excess" or "near excess" be made payable in those foreign currencies rather than in U.S. dollars, regardless of the appropriation or fund to be used for payment.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, 202–245–6347.

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rule making process. However, since the amendments are administrative in nature, the public rule making process is deemed unnecessary in this instance. The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: March 28, 1979.

E. T. Rhodes,

Deputy Assistant Secretary for Grants and Procurement.

Under Part 3–6, Foreign Purchases, Subpart 3–6.8, Balance of Payments Program, is established. In addition, the table of contents for Part 3–6 is amended to add the following:

Subpart 3–6.8—Balance of Payments Program

Sec.

3–6.850 Excess and near excess foreign currencies.
3–6.850–1 General.
3–6.850–2 Policy.
3–6.850–3 Implementation.
3–6.850–4 Notification.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

§ 3–6.850 Excess and near excess foreign currencies.

§ 3–6.850–1 General.

The Treasury Department periodically determines that the U.S. supply of currencies from certain foreign countries is considered excessive or nearly excessive to normal requirements. As a result, the Office of Management and Budget has directed that Government departments and agencies establish policies and procedures to ensure that obligations incurred in foreign countries having currencies declared as "excess" or "near excess," whether by contract or otherwise, be made payable in those foreign currencies rather than in U.S. dollars, regardless of the appropriation or fund to be used for payment. (See OMB Circular No. A–20, Revised.)

§ 3–6.850–2 Policy.

Contracting officers who award contracts involving performance in a foreign country which has been determined to have a currency in the "excess" or "near excess" category should ensure that payments for obligations and/or reimbursement for expenses incurred in the foreign country are made in the local currency.

(a) If the contract involves expenditures in both the United States and a foreign country having a currency determined to be in the "excess" or "near excess" category, the contracting officer may stipulate that payment be made in U.S. dollars for the contractor's obligations and expenses incurred within the United States.

(b) If a contract provides for reimbursement of travel expenses incurred in a foreign country having a currency determined to be in the "excess" or "near excess" category, the contracting officer should stipulate that the appropriate activity provide

Government Transportation Requests for payment of airline transportation as a substitute for reimbursement of the cost of airline tickets.

§ 3-6.850-3 Implementation.

The contracting officer shall develop the necessary statement(s) to implement the policy expressed in § 3-6.850-2 and include the statement(s) in the solicitation and resultant contract.

§ 3-6.850-4 Notification.

Lists of foreign countries having currencies determined to be in the "excess" and "near excess" categories will be furnished to the Department's procurement activities by the Division of Procurement Policy and Regulations Development.

[FR Doc. 79-11070 Filed 4-9-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

41 CFR Part 114-51

Provision and Assignment of Quarters and Furnishings

AGENCY: Office of the Secretary, Interior.

ACTION: Final Regulation.

SUMMARY: This regulation amends Departmental regulations pertaining to administration of Government Employee Quarters. The amendment increases the Monetary Limitation on construction of single family housing units and establishes a procedure for review of employee housing exceeding that limitation.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: James O. Wyatt, Chief, Division of Property Management, Office of Administrative and Management Policy (PM/PAM), Room 5310, Department of the Interior, Washington, D.C. 20240. Telephone number area code (202) 343-3185.

SUPPLEMENTAL INFORMATION: The increase in Monetary Limitation from $45,000 to $65,000 was established by the House Committee on Appropriations in its Report (No. 95-1251) on Department of the Interior and Related Agencies Appropriation Bill, 1979 (see Page 10 of the report).

Because this amendment relates only to internal Departmental procedures, the Department's proposed rulemaking procedures are considered inapplicable.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Note.—The primary author of this document is George Sandberg, Real Property Officer, Office of Administrative and Management Policy, Telephone Number Area Code (202) 343-3185.

Dated: April 2, 1979.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

41 CFR Part 114-51 is amended as follows:

Subpart 114-51.1—Provision of Quarters

1. Amend § 114-51.104 to read as follows:

§ 114-51.104 Housing cost limitation.

Employee Housing provided by the bureaus and offices of the Department shall be subject to the following Monetary Limitations:

(a) *Construction of Government-owned housing.* (1) A maximum amount of $65,000 (regardless of the source of financing) may be expended for construction of single family employee housing units in the Continental United States, Alaska, Hawaii, and the Territories, including costs of engineering and design. For individual cost elements refer to §§ 114-51.104-1 and 114-51.104-2 to determine whether they are to be included in determining the above limitation.

(2) Any request for an exception to the above Monetary Limitation must be submitted through the Director, Office of Administrative and Management Policy (PAM/PM) to the Interior Subcommittee, House Committee on Appropriations, for review and approval action in advance of the expenditure of any funds.

(b) *Utilization of Acquired Housing.* (1) Advance approval will be required by the Director, Office of Administrative and Management Policy prior to utilization, as Government employee housing, of any housing unit acquired after April 1, 1979, when the actual expenditure of Government funds for such housing exceeds $65,000, exclusive of the contributory value of the lot upon which it is located.

(2) Any request for approval shall include an approved D.I. Form 1871 (Quarters Justification) together with information as to the actual cost of the acquired property that provides a break down of the respective housing and lot values.

2. Amend the first sentence of § 114-51.104-1 to read as follows:

§ 114-51.104-1 Elements of costs chargeable to limitation.

The following elements of cost will be charged against the cost limitation set forth in IPMR § 114-51.104:

* * * * *

3. Amend the first sentence of § 114-51.104-3 to read as follows:

§ 114-51.104-3 Requests for authorization to exceed cost limitation.

When it is determined that a dwelling cannot be constructed within the cost limitation set forth in IPMR § 114-51.104, a request for approval to exceed the limitation may be submitted for Departmental consideration.

* * * * *

[FR Doc. 79-11032 Filed 4-9-79; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Fee Refunds and Future FCC Fees

AGENCY: Federal Communications Commision.

ACTION: First Report and Order, Docket 78-316.

SUMMARY: The FCC has adopted final procedures and dollar amounts to begin Phase I of its fee refund program which is set up to make appropriate refunds to eligible individuals who were charged a fee for services rendered by the FCC between 1970 and 1976. The FCC is taking this action in response to several decisions by the U.S. Court of Appeals for the District of Columbia Circuit.

DATES: The beginning date for operation of Phase I of the Fee Refund Program will be announced at a later time. The rule change is effective May 10, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas P. Campbell, Chief, Financial Management Division, telephone 202-632-7194.

First Report and Order

Adopted: January 31, 1979;

Released: March 29, 1979.

In the Matter of Fee Refunds and Future FCC Fees, Gen. Docket No. 78-316. See 44 FR 3299, January 16, 1979.

On September 27, 1978 we adopted a Notice of Inquiry (43 FR 46658, 69 FCC 2d 741) concerned, broadly speaking, with two general areas of the Commission's fee program—refund of fees ordered by the United States Court

of Appeals for the District of Columbia Circuit in two December 1976 decisions[1] and development of a new fee schedule for future applicability. This report and order deals only with that portion of the inquiry related to refund of previously collected fees. Thus, it should be clear that decisions made with respect to the fee refund program are not necessarily intended to set a precedent for any future fee schedule that the Commission might adopt.

As a result of reviewing the comments submitted in this part of the inquiry, the questions raised and suggestions made at a public meeting/panel discussion our staff held in November,[2] and our own continuing review of the proposals set forth in the notice of inquiry, a number of changes have been made, both in the recalculated schedule and the refund procedures.[3]

A. The Recalculated Schedule of Fees

The changes which have been made in the recalculated schedule of fees and their impact on specific fees will be discussed below. Initially, however, a number of more general issues raised by the comments with regard to our cost calculations need to be addressed.

Identification of Services. The first criteria of the court opinions which have guided our recalculation process is that the assessment of a fee must be justified by a clear statement of the service which it is intended to reimburse. This criterion seems to have arisen largely as a result of the annual fee previously charged to cable television systems since it was not clear what, if any, specific service was to be reimbursed by that fee. With respect to all of the remaining fees orginally imposed, however, the fee category itself describes the general services to be reimbursed by the fees, e.g., the consideration and/or granting of an application to engage in some activity regulated by the Communications Act.[4] All of the comments which discussed this point seemed to recognize that this type of specification of services was consistent with the court's requirement.

In addition to the descriptive nature of the fee categories themselves, further specification of services to be reimbursed by each fee can be derived from the data used to calculate and allocate costs. All of that data is included in the public docket file in this proceeding and shows in detail, for each fee category, the amount and type of both non-professional/clerical services and professional services which form the basic cost allocation. The data also show the amount and type of indirect costs allocated to each fee category and explain the basis for the allocation.

Finally, the public docket file includes copies of statements prepared by each operating bureau and office explaining in general, narrative terms the nature of the services reimbursed by the fee program. (Because of the lengthy nature of this material and because none of the comments raised any substantial question about this aspect of our fee recalculation procedures, we are not reprinting here all of the material described above. However, that material is a part of the record in this proceeding which forms the basis for our decisions.)

As we stated in the Notice, all of the information described above should provide a more than ample basis for identification of the services which the fees are intended to reimburse.

The Cost Allocation Process. The Notice described the analytical process by which the Commission discovered and allocated costs, both direct and indirect, to each category of fees. (A full narrative description of the costing process is included in the docket file in this proceeding accompanying and explaining the raw cost data.) With the exception of the specific modifications described below, that part of the Notice continues as an accurate description of how we have gone about establishing the cost basis for each fee category in the recalculated schedule.

With respect to the cost allocation procedures generally, although we thought that the issue had been settled finally by the Court of Appeals, a large number of parties continued to argue in their comments that: (a) A number of activities within each general service must be excluded from the costs of that service because these activities are for the benefit of the public (e.g., handling petitions to deny or informal complaints with respect to broadcast licenses and/or transfers), or (b) that a portion of every service's costs must be excluded because the Commission is determining how the public interest would best be served, and that does not benefit the applicant who must pay the fee.

These comments miss the point in at least two important respects. In the first place, simple arithmetic will demonstrate that for this 6½-year period, the Commission is retaining, at best, a small proportion of the costs it incurred. The Commission's total costs over the period were approximately $256 million. If one assumes that half of those costs were related to the fee categories involved in Phase I of the refund program, it is apparent that the Commission is retaining approximately 20 percent of the costs it incurred. It does not seem to us unreasonable to believe that at least 20 percent of what the agency did during this period is recoverable in the fee program.

In addition, the comments making these arguments ignore the clear language of the Court of Appeals that it is the cost incurred to serve some independent public interest which should not be recovered by fees, not the costs incurred to provide a private benefit which may also create an incidental public benefit. (*EIA* v. *FCC*, 554, F.2d 1109, 1115). The general standard which the Court established is whether the particular activity is "a part of the service the agency must render to the (applicant) in order for him to comply with the statute * * * [T]he FCC is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit." *Id.* In rejecting similar arguments that the Commission could not impose fees for tariff filings or equipment approval activities, the Court said:

Tariff filings are required by 47 U.S.C. 203(a)(1970) and provide a means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. Although this

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[1] *National Ass'n of Broadcasters* v. *FCC*, 544 F.2d 1118 (D.C. Cir. 1976) and *Capital Cities Communications, Inc.* v. *FCC*, 554 F.2d 1135 (D.C. Cir. 1976).

[2] A transcript of that meeting was placed in the public docket file in this proceeding.

[3] Several of the parties asserted that it was unfair to require comments to be made at this stage because of the fee refund proposals were too tentative and incomplete. In the first place, it is not all clear that the Commission is under any legal obligation to submit this matter for public comment because we are taking specific action to comply with a court remand and are not involved in a rule making proceeding as such. However, even if we assume that the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) were applicable to this situation, it is abundantly clear that the procedures we have followed here have been consistent with those provisions. Courts have made clear that the APA "does not require an agency to publish in advance every precise proposal which it may ultimately adopt * * *." Notice required by the APA "is sufficient if it provides a description of the subject and issues involved." *California Citizens Band Ass'n* v. *FCC*, 375 F.2d 43, 48–49 (9th Cir.), *cert. denied*, 389 U.S. 844 (1967). Although the Notice in this proceeding did not contain the final proposal on every issue concerning the calculation and administration of fee refunds, it went far beyond the minimum that would be required if the APA were applicable. We see no legitimate grounds for the assertions that parties were not provided adequate notice upon which to base their comments on the proposed fee refund program.

[4] The only obvious exception to this is the annual fee for broadcast stations. However, it was made clear when that fee was first imposed in 1970 that the annual fee was in lieu of a renewal fee which was being dropped. Thus, in our recalculations, the services that are reimbursed by the broadcast annual fees are those related to the renewal of license. (For simplicity of administration, the cost of those services have been annualized in order that they can be matched against previously paid annual fees to determine the appropriate refund.)

statute was enacted in order to protect the public against excessive or unreasonably discriminating or preferential charges, that result is only an incidental benefit from the *service* which is rendered by the agency, i.e., assisting the carriers in complying with the statute. Similarly, equipment certification, acceptance, and approval is required by 47 U.S.C. 302(a)(1970) and 47 CFR 2.803 (1975), and assists the manufacturer in marketing a quality product and gives him credibility in the market place. Other commission fees at issue in this case can be justified by the statutory requirement of a permit for construction of new or extended lines or the discontinuance of service by a common carrier, 47 U.S.C. 214 (1970), and by the requirement of an operating license and station construction permit under 47 U.S.C. 301, 319 (1970).

Id. at 1115–15. It seems clear to us from this discussion that, to the extent that activities are a necessary element of providing the service requested, the cost of those activities is properly included in the costs to be recovered in the fee program.

All of the activities in which the Commission engages in reviewing and processing applications are to ensure that the applicant is in compliance with the requirements of the statute. The activities for which costs have been assessed, including review and processing of all aspects of the application as well as any petitions to deny or informal complaints, are thus an "integral * * * part of the procedure which is set in motion by the application * * * The agency is not limited to charging for activities that are beneficial to an applicant, but can include in its fee the cost of any service that is necessarily rendered to him." *EIA* v. *FCC, supra,* 554 F.2d at 1117. That definition has guided our assignment of costs to each fee category. An examination of the data supporting the recalculated fee schedule will demonstrate that reimbursable services have been limited to those which are an integral part of the procedures set in motion by the applicant, necessarily rendered to him to ensure compliance with statutory requirements.

Related to the above discussion, a number of comments pointed to two elements of broadcast costs which they believe were clearly inappropriate to be reimbursed by fees: Review of stations' equal employment opportunity programs and consideration of petitions to deny. However, the data on both of these areas were misinterpreted. The costs associated with EEO review were not included in the final cost figures, although they did appear in some of the earlier raw data that the comments apparently relied upon. It should be emphasized, however, that the reason these costs were excluded was not because they were not properly reimbursable costs—we think that they clearly come within the area of services necessarily rendered to the applicant to assist him in complying with his statutory duties—but because the cost allocation process was based on activities during FY 1971, a period before the Commission was doing significant EEO review.

With respect to the costs of reviewing petitions to deny and informal objections, we have noted above why we reject the concept that these are not properly includable costs. However, a number of the broadcast comments misinterpreted the data with respect to the allocation of the costs of processing petitions to deny. Preliminary data which was developed during the costing process identified, in a number of cases, costs associated with processing contested as well as uncontested applications. With respect to broadcast license renewals, several comments noted, this included 118 hours of attorney time related to petitions to deny. The recalculated costs, however, reflect an average of the costs associated with all applications, both contested and uncontested. Since only a small percentage of applications are contested, the additional costs of dealing with contested applications have not substantially increased the average cost figure. It should have been obvious to the broadcast commenters that each broadcast station was not being assessed 118 hours of attorney time as part of its annual fee costs. The total of the branch costs allocated to this category in the Notice was only $212.96, which is hardly consistent with 118 hours of attorney time devoted to considering petitions to deny. (The cost tables attached to the Notice showed a branch cost of $70.98, i.e., ⅓ of $212.96, to reflect the annualization of triennial renewal costs).

Several of the comments also questioned how it was possible for any of the recalculated fees to be higher than the fee that was paid since the original fees were supposed to have recovered *total* costs and included consideration of value to the recipient while the recalculated fees are not designed to reimburse total agency costs and specifically exclude value to the recipient.

In the 1970 fee schedule, the goal was that each operating bureau would recover its total costs through fees imposed for its services. However, there was no effort to insure that any particular fee recovered the costs of that particular service. As a result there was a substantial cross subsidy among fees within each bureau. In the Broadcast Bureau, for example, many of the routine services were assessed only minimal fees of $25 to $100, less than the actual cost of providing the services, while assignment and transfer fees were, in some instances, hundreds of thousands of dollars, many times the cost of providing the service. In the recalculated fee schedule we have attempted to establish the cost of providing the specific services related to each fee category. Thus the size of the proposed refund reflects the acknowledged fact that in previous fee schedules, individual fees were not necessarily closely related to the specific costs of providing the service.

As to value to the recipient, that factor did not operate in previous fee schedules to assign any additional costs, but was a consideration in allocating the existing pool of costs and formed the basis upon which judgments were made as to the extent to which one fee category, such as the assignment and transfer fees noted above, would, in effect, subsidize other categories. Since the value to the recipient consideration did not add any costs to previous fees, our elimination of it from the recalculated schedule does not mean that anything is automatically subtracted from previous fees.

A number of comments argued that it was improper for the costs of the Commissioners offices, the Office of General Counsel and the Office of Plans and Policy to be reimbursed by the fee program since these organizations provided no specific services to identifiable beneficiaries. We believe that these arguments reflect an incorrect understanding both of what the court decisions require and what the basis for these cost allocations was.

As we have pointed out above, the court decisions do not limit the Commission to recovering the costs of specific services requested by an applicant or even of services which directly benefit him; the Commission may recover the cost of any service which is an integral part of the procedures set in motion by the request for service, i.e., the application, and necessarily rendered to the applicant. Moreover the court decisions make clear that it is appropriate for the Commission to include indirect, overhead type costs as reimbursable costs in the fee program.

As we explained in the Notice, we have not allocated the total costs of these three elements, but only that proportion which is related to the basic

fee reimbursable services.[5] Although we understand that there are some who would dispute the extent to which these offices provide any beneficial sevices to anyone, we do not believe that it can be fairly disputed that these offices are integral parts of the process of considering applications and a necessary element of the services provided.

The commissioners' offices are, of course, the ultimate decision-making authority in providing services, and, directly or indirectly, they are a necessary element in the provision of any service. Similarly, the general counsel's legal review and guidance and the office of plans and policy's planning review and recommendations are functions inextricably intertwined with the procedures set in motion by each application.

It is true that none of these offices may specifically consider any given application, but we do not think that that is a a prerequisite for allocating this type of cost. The functions of these offices are, in some cases, to review specific applications and in others to establish guidelines, policies and procedures which affect the services that other areas of the Commission do, in fact, provide to each application. This is not to say, however, that the costs incurred by these offices in general rule making or policy making are to be reimbursed by the fee program. Rather, the manner of allocating these costs (described in footnote 5 above) is intended to confine the reimbursable costs of these offices to those activities related to what we have previously defined as fee reimbursable services.

Some comments also questioned whether the costs of administration of the fairness doctrine and political broadcasting regulations were included. These costs were not included as an examination of the data in the docket file would have demonstrated. These types of costs do not reflect services necessarily rendered to an applicant in any of our fee categories.

The impact of inflation was also noted by many comments as a justification for why complete refunds should be paid. Although we see no requirement that the impact of inflation be taken into account under these circumstances, and we have not considered it in establishing the recalculated fees, we would point out that the bulk of these recalculated fees, and thus the refunds, are based on FY 1971 costs, regardless of when the fees were actually paid. There has been no effort to recalculate a different fee schedule for each year to reflect the Commission's increased costs. Since the Commission's costs more than doubled during the 1970–76 period when fees were being collected, the overall impact of inflation is not so great here as many of the comments have suggested.

A number of the comments also argued that because of the length of time the Commission has "unlawfully" held fees, or at least a portion of them, it is obligated to pay interest on the amounts withheld in addition to the actual refund. All of these comments, however, overlooked the firmly settled principle of law that, in the absence of contract or express statutory authorization, the government is not liable for payment of interest on claims against it. *United States ex rel. Anagarica* v. *Bayard,* 127 U.S. 251, 260 (1888). *See also, United States* v. *Mescalero Apache Tribe,* 518 F.2d 1309 (Ct. Cl. 1975); *Gould* v. *United States,* 301 F.2d 557 (D.C. cir. 1962); 28 U.S.C. 2516(a). There is no contract or statutory provision that would authorize payment of interest here. [6]

Changes and Adjustments in the Recalculated Schedule. There have been several changes and adjustments in the cost calculation and allocation process since release of the Notice which have affected the recalculated cost in each fee category. Those modifications are discussed below.

(1) *Adjustment for Leave and Training.* As we indicated in the Notice, the cost allocations there did not include costs associated with annual leave, sick leave, administrative leave for such things as jury duty, holidays and training. Those costs have now been added to each fee category. Although some of the comments raised questions about whether these costs should be reimbursed by the fee program, we see no reason why they should be excluded. They are a normal component of personnel costs and are properly allocated to be reimbursed by the fee program, just as direct personnel compensation costs are a component of personnel costs allocated to the fee program.

(2) *Space Rental Costs.* The cost allocation described in the Notice inadvertently excluded space rental costs for 1970. (Space rental costs were included in the 1975 allocations.) FY 1971 space rental costs were $5 per square foot for 329,562 square feet, for a total cost of $1,647,810. (Since this cost was allocated to each fee category on a work hour basis, the total space rental cost is not being recovered but only that proportion related to providing fee reimbursable services.

Adjudicatory Costs. The Notice proposed that the costs associated with licensing-related hearings be reimbursed by allocating an equal share of those costs incurred by each bureau to all of the licensee/applicants in that bureau's fee categories. We expressed some concern about whether this was the most appropriate approach, but observed that adjudicatory costs could be viewed as a type of overhead since all applicants, regardless of whether they were directly involved in an adjudicatory proceeding, benefitted from the Commission's maintenance of an adjudicatory capability and from the precedents established in hearings. Moreover, this type of allocation has the virtues of simplicity and avoidance of placing an extraordinary burden on any individual applicant. We requested comments on this and several other approaches.

This issue provoked substantial discussion in the comments, most of which opposed recovery of any adjudicatory costs. With respect to the general question of whether adjudicatory costs are properly reimbursable, we reject the arguments advanced by the comments that these costs serve and independent public interest and should not be reimbursed. Hearings are imposed only when required by the Communications Act, and we believe that the court of appeals has clearly upheld the inclusion of such hearing-related costs in the fee program:

> Although the applicant might prefer to dispense with the hearing, it is as integral a part of the procedure which is set in motion by that application as in the mechanical handling of the paper (which one might also choose to eliminate in the interest of saving money). The agency is not limited to charging for activities that are beneficial to an

[5] Commissioners, General Counsel and OPP costs were allocated in the following manner: The total costs for each office were determined (including their pro rata share of indirect costs). This was then converted to a work hour figure by dividing this total by the total amount of Commission work hours employed in 1971 or 1975, as appropriate. This figure was then multiplied by the previously determined direct work hour figure in each category to obtain a proportional share of Commissioner/OGC/OPP costs for each fee category. We believe that this method provides a sufficiently reasonable estimate to satisfy the Court's standards. We would also note, with respect to one comment which questioned whether costs for Commissioners to attend industry or public gatherings had been included, that none of the travel costs incurred by the Commission—whether Commissioners or staff—has been included to be reimbursed by the fee program.

[6] Several comments also suggested that a simple way to at least partly take into account both interest and inflation would be to refund everything. However, the Comptroller General has taken the position in a May 1977 report that the court decisions permit the Commission to refund only the amount by which the fee collected exceeded what would have been a proper fee if the correct standards had been applied in adopting the fee schedule in 1970. (Report No. CED 77–70)

applicant, but can include in its fee the cost of any service that is necessarily rendered to him.

EIA v. *FCC, supra,* 554 F.2d at 1117 at n.17.

The parties opposing inclusion of adjudicatory costs, however, emphasized subsequent language in the court's opinion suggesting that there was "some substance" to the argument that including hearing costs would improperly require an applicant to pay the litigation costs of an opposing party and that the expenses of the Commission's trial staff in hearings "might * * * be excluded" because the trial staff "presumably represents an independent public interest." *Id.*

In our view this language is dictum which is inconsistent with the general standards established by the court. There is no basis for the argument that recovery of hearing costs through the fee program would violate the holding of *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 240, that absent specific statutory authority a party may not generally be required to pay the litigation costs of an opposing party. We belive that *Alyeska* did not contemplate, and has no bearing on, a fee program where the costs to be reimbursed are not one's opponent's litigation costs (if there is more than one party to a hearing, each would continue to bear its own costs, e.g., attorney's fees, preparation of exhibits, witness fees, etc.) but the costs incurred by the Commission as a result of the adjudicatory process required by the statute as a necessary part of the procedures set in motion by the application.

We think that it was also erroneous for the court to suggest that the expenses of the Commission's trial staffs might be excluded because they represent an independent public interest. The trial staffs no more represent an independent public interest than any other elements of the commission's staff that are involved in rendering necessary services in response to applications.[7] If the expenses of trial staffs must be excluded on that basis, we would find it difficult not to exclude virtually every other activity on the same basis—at which point the statute becomes a nullity. It is clear from the opinions that the court did not intend that result.

[7] It should be pointed out that in both the Broadcasting Bureau and the Common Carrier Bureau, the trail staff does not participate in the comparative portions of hearings involving mutually exclusive applicants, thus no costs are incurred on that account, and, accordingly, none are included in the adjudicatory costs to be reimbursed by the fee program.

In sum we find no merit in the arguments that the costs of licensing-related hearings should not be reimbursed by the fee program. However, we were persuaded that the method proposed in the Notice was not the most desirable, and modifications that have been implemented are discussed below. We would emphasize that here, as in other areas, we have been somewhat bound by the limitations of past data. With the ability to start anew and compile whatever data are deemed necessary, future fee schedules may involve a substantially different approach to the allocation of adjudicatory, and other, costs.

The revised method for allocating adjudicatory costs which we intend to implement as part of the refund program will result in only those individuals whose applications or tariff filings were involved in a hearing being subjected to a charge for adjudicatory costs. This has been accomplished by developing an average cost per hearing in each of the four relevant Commission bureaus for FY 1971 (or FY 1975 for common carrier fees first imposed in that year). Those figures are: [8]

Broadcast	$9,325
Common carrier 1970	14,015
Common carrier 1975	12,436
Safety and special	8,901

These figures will, in effect, become an additional charge added to the recalculated fee. Each fee refund requester will be required to indicate on the request form whether the service for which a fee was paid and a refund is being requested involved a hearing. If it did, the refund amount shown on the table (or separately calculated if the fee was variable) will be reduced by the amount of the adjudicatory charge.[9]

We recognize that this procedure does not achieve perfection. Indeed, only a calculation of the cost of each individual hearing proceeding would satisfy that standard. However, this modification of the adjudicatory cost allocations does limit the assessment of those costs only to the individuals whose applications made the hearings necessary and to that extent is clearly more equitable. These are substantial charges, but the adjudicatory process represents a substantial cost to the Commission which the statute authorizes to be reimbursed. In our view this revised method of allocating adjudicatory costs reflects a reasonably fair procedure which will not seriously disadvantage any party.

Impact of Costing Revisions. The impact of revisions and adjustments in the cost allocation process on individual fees can be seen by comparing the categories in the attached recalculated schedule with the schedule that accompanied the Notice. The Notice also contained a table which gave figures on total fee collections in the over-$20 category by bureau/office, the estimated amount that would be refunded under the proposed recalculated schedule and the estimated amount retained. Reproduced below is a revised version of that table which reflects the impact of the revisions and adjustments described above. For convenience in comparison, the table shows both the preliminary figures which accompanied the Notice and the final figures resulting from this order.

[8] These figures were obtained by using the same adjudicatory cost figures upon which the Notice was based (i.e., the costs of hearing divisions, Administrative Law Judges, Review Board and Office of Opinions and Review devoted to licensing/tariff hearings in each bureau). These totals (for FY 1971 or 1975) were then divided by the number of hearings designated in the respective year to obtain an average.

[9] Of course, as in the case of fee categories where the recalculated costs exceed the original fee, if the recalculated cost plus the adjudicatory charge exceed the original fee, the Commission will not require the payment of any additional fee.

Preliminary and Final Estimates, FCC Phase I Fee Refund Amounts

Total Items	Service	Total Collections		Estimated Refund		Estimated Retained	
		Preliminary	Final	Preliminary	Final	Preliminary	Final
20,705	Chief Engineer	$4,397,729	$4,397,729	$2,850,316	$2,773,296	$1,547,413	$1,624,433
81,108	Common Carrier	31,781,837	31,781,837	22,590,457	23,404,101	9,191,380	8,377,736
102,900	Safety & Special	3,773,500	3,506,075	826,520	2,682,113	2,946,980	823,962
75,540	Broadcast	47,788,470	47,788,470	32,728,495	31,551,957	15,059,975	16,236,513
12,901	Cable TV	274,674	274,674	0	0	274,674	274,674
293,154	Totals	88,016,210	87,748,785	58,995,788	60,411,467	29,020,422	27,337,318

B. *Administration of the Refund Program.*

The overall design and operation of the refund program remains generally the same as described in the Notice, although a number of specific changes have been made in the refund request form and instructions to clarify certain areas which we found to be unclear and to simplify, so far as possible, the procedure for obtaining refunds.

Supporting Documentation. The requirement for inclusion of supporting documentation to accompany a refund request has been eliminated except in those cases where the refund is to be paid to a party other than the one originally responsible under our rules for payment of the fee or where the Commission denied the original application. (These exceptions are discussed below). The requirement for supporting documentation was widely misunderstood. The purpose of supporting documentation, as well as the specific information asked for on the request form, was intended not so much as a prerequisite to payment of a refund, but as a means to expedite the Commission's verification process. The purpose of the information requested is to identify the fee paid and to direct our staff to the appropriate file where payment can be verified. Because many parties interpreted the supporting documentation requirement as burdensome and unnecessary, we want to make clear that the fee refund staff will be instructed to attempt to verify any refund request that is submitted (regardless of whether the information on the form itself is accurate),[10] and to pay those which match substantially data in Commission files.

However, it should also be made clear that the less information which is provided with the request, the more difficult it will be to verify and, naturally, the longer it will be before a refund can be paid. Therefore, it is in the interest of all parties to submit as accurate and complete information as possible, both to expedite their particular request as well as reduce the overall time required to process refund requests.

Who May Request Refunds. The basic principle is that refunds will be paid only to the individual or entity which was originally required by the Commission's rules to pay the fee, regardless of who, in fact, transmitted the money to the Commission.[11] This requirement is necessary because it becomes an impossible burden for the Commission to consider and rule on all the variations of who may have some legal entitlement under state law or common law to the refund amount.[12] As is common, however, we have found it necessary to make several exceptions:

(1) *If the Original Payor No Longer Exists.* If through death of an individual, or the various forms of death of a corporation the entity originally required to pay the fee no longer exists, the refund may be paid to a successor *if* the request is accompanied by some documentation (contracts, court papers, etc.) demonstrating that the requester has a right to the assets represented by the refund.[13]

(2) *If the Original Payor Is Under The Protection Of A Court.* In the case of an individual who is under the protection of a court as a result of civil commitment or similar proceedings or a corporation as a result of bankruptcy or reorganization proceedings, a refund may be paid to the trustee or other appropriate individual consistent with the court proceedings. Again, however, appropriate documentation demonstrating the legal relationship *must* accompany the request.

(3) *Broadcast Assignment and Transfer Fees.* Under our rules, assignees/transferees (i.e., buyers) were responsible for payment of broadcast assignment and transfer fees. A number of the comments argued that because it was common practice for the parties to agree to some sharing of the fees, the Commission should permit both parties to file refund requests as an exception to the general rule that refunds would be paid only to the originally obligated party.

Based on the strength of these comments, we have decided to permit, but not encourage, this practice. Since the Commission was, in fact, a party to this type of transaction (although not, of course, to the private agreement to share fees) as a result of its responsibility to approve assignments, an exception is not entirely inappropriate here. Parties to broadcast assignments or transfers may each file refund requests for their pro rata share of the refund. However, as in the case of other exceptions noted above, supporting documentation will also be required here to demonstrate that there was an agreement and that the parties did, in fact, share payment of the fee.

It would greatly simplify and expedite the processing of these requests, however, if the parties could agree between themselves for the buyer alone to file and then disburse the appropriate share to the seller after the refund is paid. We strongly enccourage this procedure.

Common Carrier Flow-Through Proposal. The Notice proposed that "(c)ommon carriers might be ordered to pass on to customers all refunds less expenses incurred in obtaining these revenues." The comments generally opposed this proposal on grounds that the Commission was without legal authority to impose such a requirement without a hearing and on the practical grounds that the potential pass through to customers would be so small as to be negligible.

We have considered this proposal in light of the comments and decided, without reaching the legal question of our authority, that it would simply be impractical to require common carriers to flow through any fee refunds to specific groups or classes of past or current customers. We believe that it would be far too costly for common carriers to attempt to refund the fees to each individual who was a customer during the period 1970–76 or who is now a customer. Moreover, the potential refunds to each individual customer would be very small, since the fees paid were undoubtedly far less than one per cent of any common carrier's operating expenses.

Instead, fee refunds should be credited to accounts for delayed items under §§ 31.01–5 and 33.14 of the Commission's rules in the case of telephone companies, § 34.03–13 in the case of radiotelegraph carriers, and section 35.03–13 in the case of wire

[10] Although we have reduced the automated part of the refund program to a minimum in order to begin making refunds as soon as possible, certain basic data processing requirements mandate the format of the request form (in addition to the legal requirements for certification and waiver). Thus any request which is not submitted on the form will be returned with a blank copy of the form and instructions.

[11] The request form may be prepared by the requester, his attorney or agent (although the signature must conform with the requirements in the instruction). However, the refund check can be made payable and mailed only to the requester at the address supplied on the request form.

[12] One comment described a situation in which the commenter had served as an agent for several firms in obtaining certain equipment approvals from the Commission, including payment of required fees out of his own funds. The companies had neither reimbursed him nor paid his other charges and because they were foreign companies it was extremely difficult for him to obtain and satisfy legal judgments against them. Thus, he requested that the refunds be paid to him Although we sympathize with the individual's position, the Commission simply cannot be put in the position of serving as a collection agent and handing out money to whomever we determine is entitled to it on the basis of some private relationship to which the Commission was not a party.

[13] In the case of multiple requests, for example when a successor corporation is requesting refund of a number of fees paid by a corporation which it acquired, the documentation may be submitted with only one request and cross referenced on other requests if that procedure would be less burdensome to the requester.

telegraph and ocean-cable carriers. (47 CFR 31.01–5, 33.14, 34.03–13, 35.03–13). Specialized communication common carriers and domestic satellite common carriers should also credit any fee refunds to a delayed income account.

The Waiver Requirement. We proposed in the Notice that each refund requester would be required to sign a waiver whereby he accepted the refund proposed by the Commission as full satisfaction of any claim which he had against the government for refund of that fee. The purpose of the requirement, was, and is, to allow the refund program to move ahead for those who are satisfied with the level of the refund proposed while avoiding the possibility of having to make multiple refunds if a party should obtain the refund proposed and also obtain a right to some additional amount as a result of a favorable court decision.

Nearly all of the comments which discussed this issue opposed the requirement of any waiver, arguing that it was both unlawful and unfair and would ultimately be voided, if a court were to rule on the question.

In our view, although it is not without question, there is sound legal basis for the waiver. An individual who has a claim against the United States may abandon or waive that claim in whole or in part, so long as the intent to waive the claim is clear and it is made without intimidation, fraud or concealment on the part of the government. *See, e.g., St. Louis, B. & M. Ry.* v. *United States,* 268 U.S. 169 (1925). Here the intent would be clear, and none of the latter factors is present.

We reject the argument present in the comments that the waiver requirement involves duress because it requires one to forego either the right to perhaps a larger refund or to undergo litigation cost and further delay of any refund. Although it may be that in some instances the waiver procedure may require potential refund recipients to make some hard choices, we do not think that the choice is so unfairly imposed as to constitute duress that would invalidate the waiver procedure. Refusal to sign the waiver means no more than that the party will be required to forego use of the refund to which he is entitled for some additional period, and courts have held with some consistency that such an injury does not merit a high priority for protection. *Compare, e.g., Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (1958).

We also reject the argument that this is unlike a situation where private litigation is resolved by settlement because the court of appeals has already determined that the FCC must refund the amount of the fees which it collected unlawfully. The court has clearly required that the Commission recalculate what would have been a lawful fee and refund the difference. The Commission has made a good faith effort to comply with the Court's directives and, by way of the waiver, we are now saying that this is what we believe to be the proper amount to be refunded. If parties are willing to settle for that figure now that the Commission will be glad to pay it and terminate litigation over fees. If parties are not satisfied, the Commission is equally willing to continue this litigation, but we will not do both. We do not find this procedure unconscionable nor inconsistent with traditional principles. *See, e.g., Pfizer, Inc.* v. *Lord,* 456 F.2d 532, 543 (8th Cir.), *cert. denied,* 406 U.S. 976 (1972) ("The policy of the law encourages compromise to avoid the uncertainties of the outcome of litigation as well as the avoidance of wasteful litigation and expense incident thereto.") Moreover, the waiver procedure is consistent with traditional common law principles such as compromise and settlement,[14] accord and satisfaction,[15] and release.[16]

It should be pointed out that although there has been some modification in the language of the waiver, we do not believe the changes to have any substantive impact. The waiver originally read:

> If I am paid the amount of refund I have claimed on this form, I voluntarily agree to accept that amount as full satisfaction of any claim that I may have against the United States for refund of the fees covered by this claim. I also voluntarily agree to waive and abandon any rights that I may have now or may acquire in the future to refund of any additional amounts for the fees involved in this claim.

The revised language reads as follows:

> If I am paid the amount of refund I have requested on this form (including continuation pages), I voluntarily agree to accept that amount as full satisfaction of any claim that I may have against the United States for refund of fees covered by this form.

The modification was largely for purposes of simplicity and style, since the second sentence of the original waiver was essentially redundant.

Two other points should be emphasized: (1) The waiver naturally does not prevent correction of any inadvertent error made in the request by the requester and/or the Commission. (2) The waiver applies to each individual fee refund request and not to the request form as a whole, since the form has been designed to permit inclusion of a number of requests, some of which may be granted and some of which may be denied. (3) As its terms state, the waiver also does not apply if a lesser amount than the amount requested is refunded.

In sum we believe that the waiver requirement is not unfair to any party, has a substantial legal basis and serves an important function in seeking to terminate what has the prospect of becoming interminable litigation. We should emphasize that the proposed refund has been developed only after a laborious effort that attempted to adhere strictly to the court's requirement while resolving doubts in favor of refund recipients (e.g., exclusion of the value to the recipient factor, reliance almost entirely upon 1971 as a base year for cost calculations). Thus the refund, which in terms of the waiver is essentially an offer to settle for that amount, is not a number arbitrarily selected and put forth to induce parties to forego substantial rights in order to receive the instant gratification of a government check. In this context we firmly believe that both the recalculated fee and the waiver procedure will withstand whatever judicial review to which they may be subjected.

The Refund Request Form. The refund request form serves serveral purposes. Its primary purpose is to identify the requester and the fee payments for which he is requesting a refund. Its second purpose is to provide the Commission with information that will permit our refund staff to search our files to verify that the fee was, in fact, paid. As discussed earlier, the more accurate and complete the form is in this respect, the more quickly refunds can be paid. Finally the request form establishes a format which provides the minimum information necessary for the automated part of the refund program to operate.

The form has been generally redesigned from the draft presented in the Notice. The purpose of the redesign has been to simplify completion of the form and to incorporate suggestions from the comments to the extent possible. A number of the comments requested that the form be modified to permit each requester to include all of his refund requests on the same form, or,

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[14] *See, e.g., Pearson* v. *Ecological Science Corp.,* 522 F.2d 171 (5th Cir. 1975); 15A *Am Jur. 2d Compromise & Settlement.*

[15] *See, e.g., Brock & Blevins Co.* v. *United States,* 343 F.2d 951 (Ct. Cl. 1965); 1 *Am Jur. 2d Accord & Satisfaction.*

[16] *See, e.g., Macy* v. *United States,* 557 F.2d 391 (3rd Cir. 1977); *Inland Empire Builders, Inc.* v. *United States,* 424 F.2d 1370 (Ct. Cl. 1970); 66 *Am Jur. 2d Release.*

alternatively, that a separate form be used by each bureau or office.

We have attempted to respond to these requests by balancing the burdens on the requester and the ease of processing the requests by the Commission, since expedition in Commission processing is in all parties' interest. Little purpose would be served if a redesign of the form would save an hour in its preparation but result in a month's delay in paying the refund. As redesigned, the form will permit all requests to be consolidated so long as certain key information does not change. The key factors are: (1) The FCC bureau which processed the application; (2) the organization within that bureau; (3) the IRS Employer Identification number (or substitute if requester has no EIN); (4) call sign or equivalent reference. (In the case of common carrier tariff filings, this will be the lowest transmittal number included on the request form, but a single form plus continuation pages may include multiple transmittals despite the fact that the numbers are different so long as the other three key factors are constant).

We believe that this redesign will provide a form that does not impose an unreasonable burden on any requester. Because the system is partly automated and will require uniform data inputs and processing steps by all FCC bureaus and offices to satisfy minimum U.S. Treasury requirements for issuing checks, we have not been able to implement some of the specific recommendations made in the comments for dealing with certain types of refunds.

The instructions accompanying the request form have also been rewritten as a result of procedural changes and to make them as clear as possible. They should answer most questions. We recognize, however, that we cannot predict and answer all potential questions without making the instructions unwieldy. Our staff will make every effort to respond to questions on the procedures for filing refund requests. To this end, a toll-free telephone number will be established to facilitate direct communications with the refund staff. That number will be included in the instructions to the form when finally printed.

As an aid in determining the refund amount, the instructions accompanying the request form will include refund calculation tables which will display the name of the fee category, the relevant code numbers, the amount of the original fee and the amount of the refund. This should eliminate, for the most part any need for computation by requesters. We hope that it will reduce the possibility for mistakes.

Signing the Request Form. It appeared from the comments that there may have been some uncertainty as to who could properly sign the request form. Because of the legal significance attached to both the waiver and certification portion of the form, we want to be certain that there is no confusion on this point. Basically the same signature requirements apply to the refund request form as to any other application to the Commission (*see, e.g.*, 47 C.F.R. 1.513): If the requester is an individual, the form must be personally signed by the individual; if a partnership, by one of the partners; if a corporation, by an officer; and if an unincorporated association, by a member who is an officer.

Review of Denials of Refund Requests. The Notice indicated that a separate administrative appeals procedure would be established to provide for review of denials of refund requests. Our further consideration of this has led us to the conclusion that it would be unnecessary, and probably confusing, to establish some type of separate administrative review procedure solely for fee refunds. We do not anticipate that there will be a significant number of denials, and thus believe that existing review procedures will prove adequate.

In a separate section of this order, the Executive Director is delegated authority to act on refund requests. Thus the initial denial of any refund request will be made formally by the Executive Director. If any party desires to seek review by the Commission of the Executive Director's action, existing procedures for Commission review of staff actions taken pursuant to delegated authority may be employed. (*See generally*, 47 C.F.R. 1.101, *et seq.*) When requests are denied, requesters will be apprised of the availability of this procedure along with the explanation of why the request was denied.

Availability of Commission Records For Use In Preparing Refund Requests. A number of comments inquired as to the availability of Commission records which could be used by requesters in preparing refund requests, either as a substitute for missing records or as a completeness check against their own records. We suspect this question may have arisen out of the mistaken belief that the Commission has a record system devoted exclusively to fees that would show who paid a fee when and for what purpose. If that were true, this whole refund program could have started months ago. The only records the Commission has on fees (apart from monthly collection totals by broad category) are part of the Commission's substantive files. To the extent that those files are currently publicly available (as virtually all are) they will continue to be available for whatever use they may be.

When Can Requests Be Filed. The Commission will be prepared to accept refund requests as soon as the forms and instructions are printed and available since we expect that many parties will be prepared to file requests almost immediately. As soon as the necessary GAO clearance is obtained and the forms and instructions have been printed, public notice will be given announcing availability of the forms.

The fee refund staff and the automated system for processing requests will be maintained to accept refund requests for at least a year. Any requests filed after that time (the cut-off date will be announced well in advance) will be handled manually, as other workload permits, and may require a substantial amount of time before a refund payment can be made. The final date for filing refund requests for fees paid between August 1, 1970 and December 31, 1976 is December 16, 1982. Any requests for refund received after that date will not be considered.

How Long Will It Take To Process Requests. There naturally has been a great deal of interest in how long it will take to receive a refund after a request is filed. The present goal is to make payments within 90 days of receiving the request. Initially, it may be very difficult to meet that goal because of the flood of requests that we anticipate during the first few weeks of the program. The purpose in making this tentative estimate of minimum processing time required is to discourage status inquiries prior to that time. We have a limited staff to operate this program, and time devoted to responding to status inquiries will delay the actual work of processing requests.

C. Delegation of Authority to Executive Director

For the purpose of implementing the refund program, the rules are being amended to delegate to the Executive Director authority to act on requests for refund of fees.

D. Conclusion

Authority for the action taken herein is contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Title V of the Independent Offices Appropriations Act of 1952, 31 U.S.C. 383a.

Accordingly, it is ordered, That Phase I of the Fee Refund Program, as described above and in Appendix B, is hereby adopted in compliance with the mandates of the United States Court of Appeals for the District Circuit in *National Ass'n of Broadcasters* v. *FCC*, 554 F. 2d 1118 and *Capital Cities Communications, Inc.* v. *FCC*, 554 F. 2d 1135. [The effective date of the beginning of Phase I of the Fee Refund Program will be announced at a later date.]

It is further ordered, That, effective May 10, 1979, § 0.231 of the Commission's rules and regulations is amended by adding a new paragraph (h) as set out in Appendix A.

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

1. Section 0.231 of the rules, 47 CFR 0.231 is amended by adding a new paragraph (h) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(h) The Executive Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for refunds of fees.

Appendix B.—*Cost Based Fee Schedule*

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
Chief engineer:					
1970	13-10-0010 Cert., TV Receiver.	$20.36	$1.87	$2.43	$25.00
1970	13-10-0011 Cert., FM Receivers.	19.21	1.76	2.35	23.00
1970	13-10-0012 Cert., All others.	19.21	1.76	2.35	23.00
1970	13-10-0020 Prototype Cert. Part 18.	23.78	2.18	2.68	29.00
1970	13-10-0030 Cert., Mod. TV Receiver.	20.36	1.87	2.43	25.00
1970	13-10-0031 Cert., Mod. FM Receiver.	19.21	1.76	2.35	23.00
1970	13-10-0033 Cert., Mod. All others.	19.21	1.76	2.35	23.00
1970	13-10-0050 Cert., Door Opener.	19.21	1.76	2.35	23.00
1975	13-10-0051 Cert. Equip. Other than Receivers 15.	53.61	20.20	4.05	78.00
1970	13-10-0052 Cert., Field Sensor.	21.49	1.97	2.52	26.00
1970	13-10-0053 Cert. biomed.	20.92	1.92	2.47	25.00
1975	13-10-0054 Cert. EBS Encoder Part 73.	40.64	15.31	3.19	59.00
1970	13-20-0001 Type Accep.—Each Equip. Type.	69.27	6.36	5.70	81.00
1970	13-20-0002 Type Accep.—Add. of Radio Services.	33.29	3.06	3.06	39.00
1970	13-20-0003 Type Accep. Subscrip. TV.	415.07	38.13	27.75	481.00
1975	13-20-0004 Type Accep., EBS, Part 73.	41.46	15.62	3.26	60.00
1970	13-30-0010 Ty. Appr., 73 BC Mod. Monitors—SCA.	2,462.54	818.19	211.26	3,492.00
1970	13-30-0011 Ty. Appr., 73 BC Mod. Monitor—other.	1,282.95	426.26	110.66	1,820.00
1970	13-30-0012 Type Approv., 73, other equip.	1,282.95	426.26	110.66	1,820.00
1970	13-30-0020 Type Approv., 81, Ship Transmitters.	1,521.05	505.37	134.14	2,161.00
1970	13-30-0021 Type Approv., 81, Ship Radar.	1,029.12	341.93	73.77	1,445.00
1970	13-30-0022 Type Approv., 81, Ship, Auto, Systems.	10,077.15	3,348.17	871.88	14,297.00
1970	13-30-0023 Type Approv., Part 81 Keyers.	631.29	209.75	57.01	898.00
1970	13-30-0024 Type Approv., 81, Maritime Devices.	631.29	209.75	57.01	898.00
1970	13-30-0030 Type Approv., 15, Wireless Microphone.	549.74	182.65	46.95	779.00
1970	13-30-0031 Type Approval, 15, other.	549.74	182.65	46.95	779.00
1970	13-30-0040 Type Approv., 18, Medical Diathermy.	549.74	182.65	46.95	779.00
1970	13-30-0041 Type Approv., 18, Epilators.	549.74	182.65	46.95	779.00

Appendix B.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
1970	13-30-0042 Type Approv., 18, Microwave Ovens.	732.52	243.38	60.36	1,036.00
1970	13-30-0043 Type Approv., 18, Medical Ultrasonic.	485.74	161.39	40.24	687.00
1970	13-30-0044 Type Approv., 18, Indus. Ultrasonic.	485.74	161.39	40.24	687.00
1970	13-30-0045 Type Approv., 18, Other.	549.74	182.65	46.95	779.00
1970	13-30-0050 Type Approv., Mod. Retest, 73 & 18.	(*)			
1970	13-30-0051 Type Approv., Mod. Retest, 15 & 81.	(*)			
1970	13-30-0052 Type Approv., Mod., All Other.	66.31	22.03	5.11	93.00
1970	13-30-0060 Type Approv. No. Testing Required.	13.72	4.56	1.26	20.00
1975	13-30-0061 Type Approv. Correc. of deficiency. *These fees are 75% of the fee for the original specific equipment category and are related to resubmissions and/or retesting.	(*)			
Common Carrier Bureau:					
1970	16-10-1001 Constr. or relocation of dispatch station.	186.05	38.97	14.29	239.000
1970	16-10-2002 Constr. or relocation of base station.	63.12	13.22	4.93	81.00
1971	16-10-3002 Mod. constr. permit other than initial.	33.21	6.96	2.62	43.00
1970	16-10-3004 Mod. of constr. permit or license for base station.	33.21	6.96	2.62	43.00
1970	16-10-4002 Base station license renewal.	8.65	1.81	.81	11.00
1970	16-10-5002 Dispatch station license renewal.	3.54	.74	.34	5.00
1970	16-10-6001 Mod. of renew. of license for indiv. mobile stations.	4.06	.85	.56	5.00
1970	16-10-6002 Mod. of renew. of lic. for indiv. mobile stations.	4.06	.85	.56	5.00
1970	16-10-6003 Appl. for lic. for each add'l mobile unit.	4.06	.85	.56	5.00
1970	16-20-1002 Cons. permit or reloc. of central office.	63.06	13.21	5.18	81.00
1970	16-20-1501 Mod. of cons. permit for central office.	32.00	6.70	2.64	41.00
1970	16-20-3002 Operation of rural subscrib. station at temp. fixed locations.	40.01	8.38	3.35	52.00
1970	16-20-4002 Lic. or mod. for indiv. subsc. sta.	15.35	3.22	1.32	20.00
1970	16-20-5002 Lic. renew. of rural subsc. station.	8.65	1.81	.81	11.00
1970	16-20-6001 Lic. renew. for central off. station.	8.65	1.81	.81	11.00
1975	16-20-7002 Initial constr. permit.	60.00	9.15	3.86	73.00
1975	16-20-8002 Other than initial cons. permit or.	33.28	5.07	2.17	41.00
1971	16-20-9002 Constr. permit other than initial license for rural subsc.	31.65	6.63	2.60	41.00
1970	16-30-1001 Cons. perm. or mod. to chg. comm. pts.	119.25	16.92	10.10	146.00

Appendix B.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
1970	16-30-2001 Oper. of sta. at temp. fixed loc.	49.30	6.99	5.03	61.00
1970	16-30-3001 Mod. of cons. perm. or lic.	42.70	6.06	4.19	53.00
1970	16-30-4001 Lic. renewal..	62.78	8.91	5.45	77.00
1970	16-40-1001 Cons. perm. or mod. to add/chg. comm. pts.	118.91	16.87	10.06	146.00
1970	16-40-2001 Lic. for oper. of STL station.	49.30	6.99	5.03	61.00
1970	16-40-3001 Lic. for oper. of mob. TV pick-up station.	49.30	6.99	5.03	61.00
1970	16-40-4001 Mod. of license.	42.70	6.06	4.19	53.00
1970	16-40-5001 Lic. renewal..	62.78	8.91	5.45	77.00
1970	16-51-1001 Init. cons. permit for new station.	268.08	38.03	19.28	325.00
1970	16-51-2001 Auth. station location chg.		None Received		
1970	16-51-3001 Perm. for Replmt Trans.	41.12	5.83	4.19	51.00
1970	16-51-4001 Lic. modification.	204.70	29.04	15.09	249.00
1970	16-51-5001 Lic. renewal..	429.20	60.89	31.02	521.00
1970	16-52-1001 Cons. perm. for new station or add'l trans.		None Received		
1970	16-52-2001 Cons. perm. for repl't trans.	41.12	5.83	4.19	51.00
1970	16-52-3001 Auth. station location chg.		None Received		
1970	16-52-4001 Lic. mod.....	204.70	29.04	15.09	249.00
1970	16-52-5001 Lic. renew.....	165.11	23.43	12.58	201.00
1970	16-60-1002 Assignmt. or transfer.	93.94	13.33	7.55	115.00
1970	16-60-1004 Assignmt. or transfer.	54.01	7.66	5.05	67.00
1970	16-60-2001 All other.....	59.49	8.44	5.87	74.00
1970	16-70-1002 Cons. perm. for earth station.	603.20	85.58	41.92	731.00
1970	16-70-1102 Cons. perm. for comm. receive-only earth sta..	115.58	16.40	8.80	141.00
1970	16-70-1201 Developmental earth station.	88.39	12.54	7.55	108.00
1970	16-70-1301 Renew. lic. for devel. station.	57.43	8.15	5.45	71.00
1970	16-70-1401 Add'l equip.—existing comm. earth station.	95.00	13.48	8.38	117.00
1970	16-70-1501 Oper. transport. earth stat. fixed site.	160.26	22.74	12.99	196.00
1970	16-70-1601 Renew. earth station lic.	46.28	6.57	5.03	58.00
1970	16-70-1602 Lic. renew.—com. trans/rec. earth station.	114.56	16.25	9.64	140.00
1970	16-70-1603 Lic. renew.—comm. trans/rec. earth station.	42.70	6.06	4.19	53.00
1970	16-70-1801 Cons. perm. or lic.—aux. stat. to earth station.	396.24	56.22	30.18	483.00
1970	16-70-1901 Renew. lic. of aux. station.	59.49	8.44	5.87	74.00
1970	16-70-2002 Init. cons. perm. per satellite.	12,862.22	1,824.87	777.99	15,465.00
1970	16-70-2102 Auth. launch & oper. satellite.	1,043.17	148.00	72.10	1,263.00
1970	16-70-2202 Assign. comm. trans/rec. earth stat.	1,320.92	187.41	81.32	1,590.00
1970	16-70-2302 Assign. comm. rec. only or transport. earth station.	62.24	8.83	5.45	77.00
1970	16-70-2401 Stock in Comsat.	65.50	9.29	5.03	80.00
1970	16-70-2501 Other appl. under Comm. Sat. Act.	59.85	8.49	5.45	74.00

Appendix B.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
1975	16-75-1002 Reloc. station or addit. or change freq.	941.28	67.60	53.48	1,062.00
1975	16-75-1101 Mod. of const. permit or license.	52.34	3.76	3.45	60.00
1975	16-75-1201 License renewal.	78.51	5.64	5.18	89.00
1970	16-80-1001 Sec. 214—cons. landline coax. cable.	693.22	98.35	46.95	839.00
1970	16-80-1102 Sec. 214—cons. voice cables.	323.64	45.92	25.99	396.00
1970	16-80-1105 Sec. 214—cons. voice cables.	9,368.26	1,329.15	632.12	11,330.00
1970	16-80-1201 Sec. 214—facility lease.	185.01	26.25	16.77	228.00
1970	16-80-1301 Sec. 214—overseas cable cons..	96,267.12	13,658.23	5,331.07	115,256.00
1970	16-80-1401 Sec. 214—estab. comm. channels.	392.99	55.76	27.67	476.00
1970	16-80-1501 Cable landing lic.	178.64	25.35	11.74	216.00
1970	16-80-1602 Overseas cable channels.	2,337.45	331.63	133.30	2,802.00
1970	16-80-1712 Dom. to internat'l outside U.S.	1,064.25	150.99	72.10	1,287.00
1970	16-80-1722 Dom. to internat'l within U.S.	1,217.43	172.73	72.10	1,462.00
1970	16-80-1801 Carr. equip. at earth station.	488.93	63.69	30.18	543.00
1970	16-80-1901 Sec. 214—estab. sat. channels.	346.34	49.14	26.83	422.00
1970	16-80-2002 Acquire sat. channels.	274.69	38.97	19.53	333.00
1970	16-80-2122 Discont. serv. telephone co.	228.48	32.42	16.77	278.00
1970	16-80-2132 Discont. serv. telegraph co.	19.56	2.78	1.53	24.00
1970	16-80-2141 Discont. serv. public coast station.	27.07	3.84	2.52	33.00
1975	16-80-2147 Discont. serv. all other.	27.73	1.99	1.77	31.00
1970	16-80-2152 Interlocking directorate appl.	75.95	10.78	5.45	92.00
1970	16-80-2162 Sec. 221—applications.	151.90	21.55	11.74	185.00
1970	16-80-2171 Tariff applications.	33.02	3.91	2.52	39.00
1970	16-80-2181 All other	5,359.69	760.42	304.32	6,424.00
1975	16-80-2501 Lease satell. Dom. use.	253.04	18.17	17.25	288.00
1975	16-80-2702 Install or acq. equip. on overseas cable.	1,219.81	87.61	65.56	1,373.00
1975	16-80-2802 Lease channels overseas cable or radio.	1,181.24	84.84	60.82	1,327.00
1975	16-90-1002 Tariff file under 1 mil.	30.39	2.54	1.66	35.00
1975	16-90-2002 Tariff file 1 mil. to 100 mil.	120.93	10.11	6.40	137.00
1975	16-90-3002 Tariff file 100 mil. to 1 bill.	151.07	12.64	8.04	172.00
1975	16-90-4002 Tariff file 1 bill. to 10 bill.	24.41	2.04	1.29	28.00
1975	16-90-5002 Tariff file over 10 bill.	165.11	13.81	8.74	188.00
1970	16-95-0002 STA	37.93	7.95	3.50	49.00
Safety And Special:					
1970	17-11-0001 Interim Ship..	5.23	.01	.74	6.00
1970	17-12-0001 Public Coast—Initial, Renewal.	42.95	11.66	3.77	58.00
1970	17-12-0002 Public Coast Assignment.	23.15	6.29	2.52	32.00
1970	17-13-0001 Marine Micro-wave.	8.40	.88	.99	10.00
1970	17-21-0001 Operational Fixed—Initial, Renewal, Assignment.	8.61	.90	1.02	11.00
1975	17-23-0001 806-947 MHz Commercial Service.	None Received.			

Appendix B.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
1970	17-31-0001 Aviat.—Micro, New, Renew, Assign.	8.40	.88	.99	10.00
1970	17-41-0001 Special Call	3.50	.96	.46	5.00
Broadcast Bureau:					
1970	18-10-0002 CP, VHF, 50, Non-Dir.	1,350.64	301.23	88.09	1,740.00
1970	18-10-0004 CP, UHF, 50, Non-Dir.	1,215.98	271.20	79.37	1,567.00
1970	18-10-0006 CP, VHF, Next 50 Non-Dir.	1,350.64	301.23	88.09	1,740.00
1970	18-10-0008 CP,UHF, Next 50, Non-Dir.	1,350.64	301.23	88.09	1,740.00
1970	18-10-0010 CP, VHF, Balance, Non-Dir.	1,266.49	282.47	82.64	1,632.00
1970	18-10-0012 CP, UHF, Balance, Non-Dir.	1,266.49	282.47	82.64	1,632.00
1970	18-10-0014 CP, FM, A, Non-Directional.	777.09	173.31	60.39	1,011.00
1970	18-10-0016 CP, FM, B&C, VND.	777.09	173.31	60.39	1,011.00
1970	18-10-0018 CP, AM, Day, 50, ND.	589.28	131.42	60.38	781.00
1970	18-10-0020 CP, AM, Day, 25, ND.	589.28	131.42	60.38	781.00
1970	18-10-0022 CP, AM, Day, 10, ND.		None Received		
1970	18-10-0024 CP, AM, Day, 5, ND.	589.28	131.42	60.38	781.00
1970	18-10-0025 CP, AM, Day, 2.5, ND.	589.28	131.42	60.38	781.00
1970	18-10-0026 CP, AM, Day, 1, ND.	589.28	131.42	60.38	781.00
1970	18-10-0028 CP, AM, Day, 500, ND.	589.28	131.42	60.38	781.00
1970	18-10-0030 CP, AM, Day, 250, ND.	589.28	131.42	60.38	781.00
1970	18-10-0032 CP, AM, IV, ND.	538.76	120.15	55.35	714.00
1970	18-11-0001 CP—Dir. Ant, VHF/UHF.	22.84	5.10	1.68	30.00
1970	18-11-0004 CP—Dir. Ant, AM Day.	67.36	15.02	6.71	89.00
1970	18-11-0006 CP—Dir. Ant. AM, Unlimited.	1,032.58	230.29	97.25	1,360.00
1970	18-21-0001 Other—316—AM.	29.10	2.63	2.93	35.00
1970	18-21-0002 Other—316—FM.	29.10	2.63	2.93	35.00
1970	18-21-0003 Other—316—TV.	29.10	2.63	2.93	35.00
1970	18-22-0001 CP—Replace exp. permit—AM.	19.83	4.42	1.89	26.00
1970	18-22-0002 CP—Replace exp. permit—FM.	19.83	4.42	1.89	26.00
1970	18-22-0003 CP—Replace exp. permit—TV.	19.83	4.42	1.89	26.00
1970	18-22-0004 CP—Replace exp. permit—Aux.	8.27	1.84	1.05	11.00
1970	18-22-0005 CP—Minor Change—Rpl. Exp. permit.	19.83	4.42	1.89	26.00
1970	18-23-0001 Appl. for Minor Changes—AM.	225.93	50.39	17.80	294.00
1970	18-23-0002 Appl. for Minor Changes—FM.	30.47	6.79	2.88	40.00
1970	18-23-0003 Appl. for Minor Changes—TV.	318.34	71.00	24.73	414.00
1970	18-25-0002 Change call sign—AM.	33.47	1.46	3.56	38.00
1970	18-25-0004 Change call sign—FM.	33.47	1.46	3.56	38.00
1970	18-25-0006 Change call sign—TV.	33.47	1.46	3.56	38.00
1970	18-26-0001 All other appl.—AM.	92.80	20.69	7.70	121.00
1970	18-26-0002 All other appl.—FM.	36.34	8.10	3.35	48.00
1970	18-26-0003 All other appl.—TV.	33.98	7.58	3.09	45.00
1970	18-26-0004 Exper. & Devel. Appl.	1,116.57	249.02	85.18	1,451.00
1970	18-40-0001 Appl. Subscrip. TV—Filing.	1,124.58	250.83	83.42	1,459.00
1970	18-51-0002 Appl Assign./Transfer.	359.19	32.48	25.28	417.00
1970	18-60-0001 STA	9.65	2.15	.84	13.00
1970	18-70-0002 Annual Lic. Fees AM/FM.	131.88	11.93	11.60	155.00

Appendix B.—*Cost Based Fee Schedule*—Continued

Year of fee	Category	Branch cost	Bureau and Office/ division Cost	Comm. GC OPP Cost	Total
1970	18-70-0004 Annual Lic. Fees—TV.	131.88	11.93	11.60	155.00
Cable:					
1970	20-10-0001 Cars—Construction Permit.	171.16	103.37	12.93	287.00
1970	20-20-0001 Pet. Spec. Relief 76.7.	639.58	871.05	43.01	1,554.00
1970	20-20-0002 Pet. Spec. Relief 74.1109.	639.58	114.62	43.01	797.00
1970	20-20-0003 Pet. for Exper. Operations.	617.27	840.67	40.87	1,499.00
1970	20-20-0004 Pet. Waiver of Hearings.	617.27	110.63	40.87	769.00
1970	20-30-0001 CAC—Routine.	106.75	646.56	10.48	764.00
1970	20-30-0002 CAC—Non-Routine.	543.81	3,293.73	42.13	3,880.00
1970	20-50-0001 STA	89.76	7.11	6.85	104.00

Office of Chief Engineer

NOTATIONS.—1970=8/1/70 to 2/28/75 1975=3/1/75 to 12/31/76 NR=No Applications Received VAR=Variable Fee 75%=75=of file & grant fee for that particular equipment.

Fee Cat. Code #	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Certification			
13-10-0010	Application for certification of each receiver model—television receivers.	25	50	250
	Application for certification each receiver model—combination TV/FM broadcast receiver (1975).	48	.....	300
13-10-0011	Application for certification of each receiver model—FM receivers.	23	40	150
13-10-0012	Application for certification of each receiver model—all others.	23	35	150
13-10-0020	Application for prototype certification of equipment operating under Part 18.	29	25	150
13-10-0030	Request for modification of a certified receiver with no change in model number—television receivers.	25	40	..
13-10-0031	Request for modification of a certified receiver with no change in model number—FN receiver.	23	25	..
13-10-0033	Request for modification of certificated receiver with no change in model number—all others.	23	25	..
13-10-0050	Application for certification of a radio control transmitter for a door-opener under Part 15, 1971.	23	25	..
13-10-0051	Application for certification of equipment (other than receivers) operating under Part 15, 1975.	78	.....	150
	Application for certification of equipment (other than receivers and transceivers in 30-890 MHz band) operating under Part 15.	78	.....	150
	Application for certification of a transceiver in the 30-890 MHz band operating under Part 15.	78	.....	200
13-10-0052	Certification, field disturbance sensor, 1972	26	150	..
13-10-0053	Certification, transmitter for biomedical telemetry equipment under Part 15, 1972.	25	55	..
13-10-0054	Certification, EBS signal encoder operating under Part 73.	59	.....	180
	Type Acceptance			
13-20-0001	Applications for type acceptance of each equipment type.	81	100	200
13-20-0002	Application for the addition of one or more radio services to existing type acceptance for each equipment type as identified by manufacturer (or trade name) and type number.	39	100	150
13-20-0003	Approval of subscription television systems	481	1000	1500
13-20-0004	Application for type acceptance for EBS attention signal encoder operating under Part 73, 1975.	60	.....	200
	Type Approval			
13-30-0010	Application or submission for type approval, Part 73, broadcast modulation monitors—SCA and stereo.	3,492	500	3200
13-30-0011	Application or submission for type approval, Part 73, broadcast modulation monitors—other.	1,820	250	1600
13-30-0012	Application or submission for type approval, Part 73, other broadcasting equipment.	1,820	250	1600
	Application or submission for type approval, Part 73, broadcast antenna phase monitors, 1975.	1,820	.....	3200
13-30-0020	Application or submission for type approval, Part 81, ship transmitters including lifeboat transmitters.	2,161	150	1600
13-30-0021	Application or submission for type approval, Part 81, ship radar.	1,445	100	1200
13-30-0022	Application or submission for type approval, Part 81, ship automatic alarm system.	14,297	250	4000
13-30-0023	Application or submission for type approval, Part 81, ship alarm automatic keyers.	898	100	1000
13-30-0024	Application or submission for type approval, Part 81, other maritime devices.	898	200	1000

Office of Chief Engineer—Continued

NOTATIONS.—1970=8/1/70 to 2/28/75 1975=3/1/75 to 12/31/76 NR=No Applications Received VAR=Variable Fee 75%=75=of file & grant fee for that particular equipment.

Fee Cat. Code #	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Type Approval			
13-30-0030	Application or submission for type approval, Part 15, wireless microphones.	779	150	600
13-30-0031	Application or submission for type approval, Part 15, other low-powered devices.	779	100	600
	Application or submission for type approval, Part 15, auditory training transmitters, 1975.	779	.....	1600
	Application or submission for type approval, Part 15, class I TV device if rated to operate on 1 or 2 channels, 1975.	779	.....	2000
	Application or submission for type approval, Part 15, class I TV device if rated to operate on more than 2 channels, for each channel over 2, 1975.	779	.....	1000
13-30-0040	Application or submission for type approval, Part 18, medical diathermy.	779	500	1000
13-30-0041	Application or submission for type approval, Part 18, epilators.	779	500	.....
13-30-0042	Application or submission for type approval, Part 18, microwave ovens.	1,036	1000	1200
13-30-0043	Application or submission for type approval, Part 18, medical ultrasonic.	687	250	600
13-30-0044	Application or submission for type approval, Part 18, industrial ultrasonic.	687	250	.....
13-30-0045	Application or submission for type approval, Part 18, other ISM devices.	779	250	1000
13-30-0050	Application for modification of existing type approved equipment, modifications which require retesting, Parts 73 and 18.	75%	250	75%
13-30-0051	Application for modification of existing type approved equipment, modifications which require retesting, Parts 15, and 81.	75%	100	75%
13-30-0052	Applications for modification of existing type approved equipment, all other modifications.	93	50	100
13-30-0060	Application for type approval of equipment not requiring tests, 1975.	20	.....	100
13-30-0061	Correction of equipment deficiencies, application for type approval where unit has previously been rejected for deficiency and is resubmitted for testing, 1975.	75%	.....	75%

Common Carrier Bureau

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Domestic Public Land Mobile Radio Service.			
16-10-1001	Application for initial construction permit or for relocation of a base station, including authority for mobile units, blanket dispatch station authority, and standby transmitters without independent radiating systems.	239	250	Var.
16-10-2002	Application for initial construction permit or for relocation of a dispatch station, control station or repeater station.	81	125	75
16-10-3002	Application for other than initial construction permit, modification of construction permit or license for base station, dispatch station, auxiliary test station control station or repeater station at an existing station location, 1971.	43	75	30
16-10-3004	Application for modification of construction permit or license for base station, dispatch station, control station or repeater station at an existing station location.	43	75	.....
16-10-4002	Application for renewal of license for base station	11	150	Var.
16-10-5002	Application for renewal of license for dispatch station, control station or repeater station.	5	60	35
16-10-6001	Application for license, modification of license or renewal of license for individual mobile station—per mobile unt.	5	50	.....
16-10-6002	Application for license or renewal of license for individual mobile stations—one mobile unit per application, 1971.	5	50	15
16-10-6003	Application for license, modification of license or renewal of license for individual mobile stations—each additional mobile unit per application, 1971.	5	30	9
	Rural Radio Service			
16-20-1002	Application for an initial construction permit or for relocation of facilities—Central Office.	81	200	120
16-20-1501	Application for modification of construction permit or license—Central Office.	41	75	.....
16-20-3002	Application for license for operation of rural subscriber station at temporary fixed locations.	52	30	20
16-20-4002	Application for license or modification of license for individual subscriber stations.	20	25	.....
16-20-5002	Application for renewal of license for rural subscriber station.	11	25	15
16-20-6001	Application for renewal of license for Central Office Station.	11	125	75

Common Carrier Bureau —Continued

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
16-20-7002	Application for an initial construction permit or for relocation of rural subscriber facilities, 1975.	73	.....	75
16-20-8002	Application for other than initial construction permit, modification of construction permit or license for rural subscriber facilities, 1975.	41	.....	45
16-20-9002	Application for other than initial construction permit, modification of construction permit or license for central office, inter-office or relay facilities, 1971.	41	75	45
	Point to Point Microwave Radio Service			
16-30-1001	Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to existing points of communication or for relocation of facilities.	146	200	120
16-30-2001	Application for license for operation of a station at temporary-fixed locations—.	61	150	90
16-30-3001	Application for modification of construction permit or license.	53	200	30
16-30-4001	Application for renewal of license	77	125	75
	Local Television Transmission Service			
16-40-1001	Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to an existing station location or for relocation of facilities.	146	200	120
16-40-2001	Application for license for operation of an STL station at temporary-fixed locations.	61	150	90
16-40-3001	Application for license for operation of a mobile television pickup station.	61	150	90
16-40-4001	Application for modification of a license	53	100	30
16-40-5001	Application for renewal of license	77	75	75
	International Fixed Public Radiocommunication Services—International Fixed Public System			
16-51-1001	Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.	325	650	500
16-51-2001	Application for change of location of an authorized station.	NR	550	330
16-51-3001	Application for construction permit for a replacement transmitter(s) at an authorized station.	51	175	105
16-51-4001	Application for modification of license	249	125	75
16-51-5001	Application for renewal of license	521	300	180
	International Fixed Public Radiocommunications—International Control Station			
16-52-1001	Application for initial construction permit for a new station or an additional transmitter(s) at an authorized station.	NR	500	300
16-52-2001	Application for construction permit for a replacement transmitter(s) at an authorized station.	51	300	180
16-52-3001	Application for change of location of an authorized station.	NR	500	300
16-52-4001	Application for modification of license	249	125	75
16-52-5001	Application for renewal of license	201	150	90
	Other Radio Services			
16-60-1002	International Fixed Radio Communications Services. Application for assignment of an authorization or transfer of control.	115	60	35
16-60-1004	Domestic Public Land Mobile Radio Service only. Application for Assignment of an Authorization or Transfer of Control.	67	60	35
16-60-2001	All other common carrier radio applications	74	25	15
	Satellite Communications Services			
16-70-1002	Application for initial construction permit for earth station.	731	50500	Var.
16-70-1102	Application for initital construction permit for a commercial receive-only or transportable earth station, 1971.	141	Var	Var.
16-70-1201	Application for initial construction permit for an earth station to be used solely for developmental or noncommercial purposes, 1971.	108	150	.....
16-70-1301	Application for renewal of license for a developmental or noncommercial earth station, 1971.	71	150	.....
16-70-1401	Application for modification of construction permit for earth station.	117	2200	Var.
16-70-1501	Application for authority to operate a transportable earth station at a fixed site, 1971.	196	300	18
16-70-1601	Application for renewal of license—earth station	58	500	.....
16-70-1602	Application for renewal of license for a commercial transmit receive earth station, 1971.	140	5100	306
16-70-1603	Application for renewal of license for a commercial receive-only earth station, 1971.	53	550	330
16-70-1801	Application for initial construction permit or modification of construction permit of license for an auxiliary station (boresight) to an earth station or for a telemetry, tracking and control station, 1971.	483	Var	Var.
16-70-1901	Application for renewal of license of an auxiliary station to an earth station or for a telemetry, tracking or control station, 1971.	74	250	180
16-70-2002	Application for initial construction permit per satellite, 1971.	15,465	5250	3150

Common Carrier Bureau —Continued

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
16-70-2102	Application for authority to construct and launch satellites.	1,263	100,500	Var.
16-70-2202	Application for assignment of a commercial transmit/receive earth station or satellite construction permit or license or transfer of control of a licensee or permittee, per earth station or satellite.	1,590	300	45
16-70-2302	Application for assignment of a commercial receive-only or transportable earth station construction permit or license or transfer of control of a licensee or permittee, per earth station, 1971.	77	75	45
16-70-2401	Application for communications common carrier for authorization to own stock in the Communications Satellite Corporation.	80	75	45
16-70-2501	Any other application filed under the Communication Satellite Act.	74	75	45
	Multipoint Distribution Service			
16-75-1002	Application for initial construction permit or for modification involving relocation of station or addition or change of frequencies or increase in power, 1975.	1,062	.....	150
16-75-1101	Application for other modification of construction permit or license, 1975.	60	.....	30
16-75-1201	Application for renewal of license, 1975	89	.....	75
	Common Carrier Nonradio Applications			
16-80-1001	Section 214 applications for construction of landline coaxial cable.	839	Var.	Var.
	Section 214 application for construction or acquisition of landline domestic cable or waveguide, 1975.	839	Var.	Var.
16-80-1102	Section 214 applications to extend or supplement facilities by construction of voice cables or installation of carrier equipment on landline wire, cable or radio routes.	396	Var.	Var.
16-80-1105	Section 214 applications to extend or supplement facilities by construction of voice cables or installation of carrier equipment on landline wire, cable or radio routes (AT&T blanket).	11,330	Var.	Var.
16-80-1201	Section 214 applications to lease facilities from other carriers (except overseas).	228	Var.	Var.
16-80-1301	Section 214 applications for overseas cable construction.	115,256	Var.	21 Var.
16-80-1401	Section 214 applications to establish communication channels on overseas cables.	476	63	21.....
16-80-1501	Cable landing license	216	200	120
16-80-1602	Section 214 application to acquire overseas cable channels.	2,802	Var.	.....
16-80-1712	Section 214 application to acquire domestic circuits to interconnect international circuits—circuits outside the U.S.	1,287	25	15
16-80-1722	Section 214 application to acquire domestic circuits to interconnect international circuits—circuits within the U.S. or territories.	1,462	Var.	Var.
16-80-1801	Section 214 application to install carrier equipment to establish channels of communication at an earth station, 1971.	543	Var.	Var.
16-80-1901	Section 214 application to establish and operate satellite channels.	422	Var.	150
	Section 214 application to establish and provide channels of communication via satellite, 1971.	422	250	150
	Section 214 application to establish and provide international channels of communication via satellite, 1975.	422	.....	150
16-80-2002	Section 214 application to acquire satellite channels...	333	Var.	Var.
	Section 214 application to acquire satellite channels for international use, 1975.	333	Var.	Var.
	Common Carrier Nonradio Applications			
16-80-2122	Section 214 applications to discontinue, reduce or impair services to the public—telephone companies.	278	100	21.....
16-80-2132	Section 214 applications to discontinue, reduce or impair services to the public—telegraph companies.	24	25	15
16-80-2141	Section 214 applications to discontinue, reduce or impair services to the public, public coast stations, 1971.	33	25	15
16-80-2147	Section 214 application to discontinue, reduce or impair service to the public, all other, 1975.	31	.....	60
16-80-2152	Interlocking directorate applications	92	50	30
16-80-2162	Section 221 applications	185	260	30
16-80-2171	Tariff applications to change charges or regulations on less than statutory notice.	39	25	25
16-80-2181	All other common carrier nonradio applications	6,424	25	15
16-80-2501	Section 214 application to lease satellite transponder for domestic use (per transponder), 1975.	288	.....	25
16-80-2702	Section 214 application to establish or supplement international facilities by installation or acquisition of carrier equipment on overseas cable or radio routes (except satellite) or to acquire such facilities on a capital basis other than ownership, 1975.	1,373	.....	Var.

Common Carrier Bureau—Continued

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
16-80-2802	Section 214 application to lease channels on overseas cable or radio routes (except satellites), 1975.	1,327	.....	Var.
	Tariff Filings			
16-90-1002	Annual Gross Revenue of Issuing Carrier: Under $1 million. 1975.	35	.....	50
16-90-2002	Annual Gross Revenue of Issuing Carrier: $1 million to $100 million. 1975.	137	.....	100
16-90-3002	Annual Gross Revenue of Issuing Carrier: $100 million to $1 billion. 1975.	172	.....	300
16-90-4002	Annual Gross Revenue of Issuing Carrier: $1 billion to $10 billion. 1975.	28	.....	500
16-90-5002	Annual Gross Revenue of Issuing Carrier: Over $10 billion. 1975.	188	.....	700
	Special Temporary Authority			
16-95-0002	Special Temporary Authority	49	25	25

Safety and Special Radio Services Bureau

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Maritime Radio Services			
17-11-0001	Interim Ship Permit Including Subsequent Initial License.	6	25	10
17-12-0001	Common Carrier Public Coast Station—Initial License and Renewal.	58	75	75
17-12-0002	Common Carrier Public Coast Station—Assignment of License.	32	75	75
17-13-0001	Marine Radio Service—Microwave Station (new, renewal, assignment).	10	75	20
	Industrial, Land Transportation and Public Safety Services			
17-21-0001	Operational Fixed Stations Using Frequencies Above 952 MHz—Initial, Renewal, Assignment.	11	75	20
17-23-0001	Stations Using Frequencies in the 806-947 MHz Band and providing service on a commercial basis—per channel, 1975.	NR	.....	200
	Aviation Radio Service			
17-31-0001	Aviation Radio Service—Microwave Stations (New, renewal, assignment).	10	75	20
	Amateur Radio Service			
17-41-0001	Special Call Sign	5	25	25
	Broadcast Bureau, Constuction Permit			
18-10-0002	Application for Construction Permit for New Station or for Major Changes in Existing Station—VHF—Top 50 Markets, Non-Directional.	1,740	50000	77500
18-10-0004	Application for Construction Permit for New Station or for Major Changes in Existing Station—UHF—Top 50 Markets—Non-Directional.	1,567	25000	25000
18-10-0006	Application for Construction Permit for New Station or for Major Changes in Existing Station—VHF—Next 50 Markets—Non-Directional.	1,740	20000	31000
18-10-0008	Application for Construction Permit for New Station or for Major Changes in Existing Station—UHF—Next 50 Markets—Non-Directional.	1,740	10000	10000
18-10-0010	Application for Construction Permit for New Station or for Major Changes in Existing Station—VHF—Balance—Non-Directional.	1,632	10000	15500
18-10-0012	Application for Construction Permit for New Station or for Major Changes in Existing Station—UHF—Balance—Non-Directional.	1,632	5000	5000
18-10-0014	Application for Construction Permit for New Station or for Major Changes in Existing Station—FM—Class A—Non-Directional.	1,011	1000	1550
18-10-0016	Application for Construction Permit for New Station or for Major Changes in Existing Station—FM—Class B and C—Non-Directional.	1,011	2000	3100
18-10-0018	Application for Construction Permit for Station or for Major Changes in Existing Station—AM—Day 50 KW—Non-Directional.	781	5000	7750
18-10-0020	Application for Construction Permit for New Station or for Major Changes in Existing Station—AM—Day—25KW—Non-Directional.	781	4000	6200
18-10-0022	Application for Construction Permit for New Station or for Major Changes in Existing Station—AM—Day 10KW—Non-Directional.	NR	3000	4650
	Broadcast Bureau, Constuction Permit			
18-10-0024	Application for construction permit for new station or for major changes in existing station—AM—Day—5KW—Non-Directional.	781	2000	310
18-10-0025	Application for construction permit for new station or for major changes in existing station—AM—Day—2.5 kw—Non-Directional.	781	.....	2325

Safety and Special Radio Services Bureau

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
18-10-0026	Application for construction permit for new station or for major changes in existing station—AM—Day—1 KW—Non-Directional.	781	1000	1550
18-10-0028	Application for construction permit for new station or for major changes in existing station—AM—Day—500 W—Non-Directional.	781	500	775
18-10-0030	Application for construction permit for new station or for major changes in existing station—AM—Day—250W—Non-Directional.	781	250	390
18-10-0032	Application for construction permit for new station or for major changes in existing station—AM—Class IV—Non-Directional.	714	1000	1550
18-11-0001	Application for construction permit for new station or for major changes in existing station. For directional antenna in addition to above (VHF/UHF top 50 markets, VHF/UHF next 50 markets, VHF/UHF balance).	30	500	.....
18-11-0004	Application for construction permit for new station or for major changes in existing station. For directional antenna in addition to above. (AM, Day—50 KW, 25 KW, 10KW, 5KW, 1KW, 500 W 250 W).	89	500	.....
18-11-0006	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 50 kw.	1,360	10,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 25 kw.	1,360	8,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 10 kw.	1,360	6,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 5 kw.	1,360	4,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 2.5 kw.	1,360	.....	4650
	Application for construction permits for new station or for major changes in existing station. For directional antenna. AM unlimited 1 kw.	1,360	2,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 500 W.	1,360	1,500	.....
	Application for construction permit for new station or for major changes in existing station. For directional antenna. AM unlimited 250 W.	1,360	1000	.....
	Other Applications			
18-21-0001	Applications Filed on Form 316 (Where more than one broadcast station license is involved. . .) AM.	35	250	.....
	Assignment and transfer Sales Exchange. Application for assignment of license or transfer of control on Form 316 filing—AM 1975.	35	.....	10
18-21-0002	Applications filed on Form 316 (Where more than one broadcast station license is involved. . .) FM.	35	250	.....
	Assignment and transfers, Sales Exchange. Application for assignment of license or transfer of control on Form 316 filing—FM 1975..	35	.....	10
18-21-0003	Applications filed on Form 316 (Where more than one broadcast station is involved. . .) TV.	35	250	.....
	Assignment and transfers, Sales Exchange. Application for assignment of license or transfer of control on Form 316 filing—TV 1975..	35	.....	10
18-22-0001	Application for Construction Permit to Replace Expired Permit, FCC Form 321—AM.	26	500	25
18-22-0002	Application for Construction Permit to Replace Expired Permit, FCC Form 321—FM.	26	500	25
18-22-0003	Application for Construction Permit to Replace Expired Permit, FCC Form 321—TV.	26	500	25
	Other Applications			
18-22-0004	Application for Construction Permit to Replace Expired Permit, FCC Form 321—Auxiliary.	11	50	50
18-22-0005	Application for Construction Permit to Replace Expired Permit, FCC Form 321—(Minor Change) AM, FM, TV.	26	50	100
18-23-0001	Application for Modification Other than Major Change—AM.	294	50	.....
	Application for Modification Other than a Major Change, Form 301, Application to Change Antenna Transmitter Site, or to increase Antenna Height, or to Change Antenna Pattern—AM. 1975.	294	.....	Var
	Application for Modification other than a Major Change, Form 301, Application to Change Antenna Transmitter Site, or to increase Antenna Height, or to change Antenna Pattern—Auxiliary (if AM). 1975.	294	.....	Var.
	Application for Modification Other than a major change, Form 301. All other FCC Form 301 applications—AM. 1975.	294	.....	100
18-23-0002	Application for Modification Other than a Major Change—FM.	40	50	.....

Safety and Special Radio Services Bureau—Continued

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Application for Modification Other than a Major Change, Form 301, Application to change Antenna Transmitter Site or to increase Antenna Height, or to change Antenna Pattern—FM. 1975.	40	.....	Var.
	Application for modification other than a major change, Form 301, Application to change Antenna transmitter Site or to increase Antenna Height, or to change Antenna Pattern—Auxiliary (if FM). 1975.	40	.....	Var.
	Application for Modification Other than a Major Change, Form 301, All other FCC Form 301 applications—FM. 1975.	40	.....	100
18-23-0003	Application for Modification other than a Major change—TV.	414	50	.....
	Application for Modification Other than a Major Change, Form 301, Application to change antenna transmitter Site or to Increase Antenna Height, or to change Antenna Pattern—TV. 1975.	414	.....	Var.
	Application for Modification Other than a Major Change, Form 301. All other FCC Form 301 Applications—TV. 1975.	414	.....	100
18-25-0002	Application for change of call sign for broadcast station—AM.	38	100	20
18-25-0004	Application for change of call sign for broadcast station—FM.	38	100	200
18-25-0006	Application for change of call sign for broadcast station—TV.	38	100	200
18-26-0001	All other applications in the broadcast service—AM	121	50	100
	Application for Authorization in Auxiliary Broadcast Services, FCC Form 313, for Modification of Construction Permit or license in Auxiliary Broadcast Services (if AM). 1975.	121	.....	50
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new remote pickup mobile station (if AM). 1975.	121	.....	100
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if AM). 1975.	121	.....	250
	Application for construction permit or license of auxiliary or alternate main transmitter (if AM). 1975.	121	.....	50
	Application for construction permit or license of auxiliary or alternate main transmitter—Auxiliary (if AM). 1975.	121	.....	50
	Application for extension on FCC Form 701—AM. 1975.	121	.....	100
	Application for extension on FCC Form 701—auxiliary (if AM). 1975.	121	.....	50
	International Broadcasting: Construction Permits for new stations and major changes in existing stations (if AM). 1975.	121	.....	700
	International Broadcasting Construction. Grant fee for application for Seasonal Schedule (if AM). 1975.	121	.....	Var.
18-26-0002	All other applications in the broadcast services—FM...	48	50	100
	Other Applications			
Application for Authorization in Auxiliary Broadcast	Services, FCC Form 313, for Modification of Construction Permit or license in Auxiliary Broadcast Services (if FM). 1975.	48	.....	50
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new remote pickup mobile station (if FM). 1975.	48	.....	100
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new station construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if FM). 1975.	48	.....	250
	Application for construction permit or license of auxiliary or alternate main transmitter, FM. 1975.	48	.....	50
	Application for extension on FCC Form 701—AM 1975.	48	.....	100
	Application for extension on FCC Form 701—Auxiliary (if FM). 1975.	48	.....	50
	International Broadcasting: Construction Permits for new stations and major changes in existing stations (if FM). 1975.	48	.....	700
	International Broadcasting Construction. Grant fee for application for Seasonal Schedule (if FM). 1975.	48	.....	Var.
18-26-0003	All other applications in the broadcast service—TV	45	50	100
	Application for Authorization in Auxiliary Broadcast Services, FCC Form 313, for Modification of Construction Permit or license in Auxiliary Broadcast Services (if TV). 1975.	45	.....	50
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new remote pickup mobile station (if TV). 1975.	45	.....	100
	Application for Authorization in Auxiliary Broadcast Services, Form 313. Application for new station construction permit for intercity relay or for studio transmitter link or for remote pickup base station (if TV). 1975.	45	.....	250

Safety and Special Radio Services Bureau—Continued

Code No.	Fee Category (1970 Except as noted)	Cost	1970 Fee	1975 Fee
	Application for construction permit or license of auxiliary or alternate main transmitter—TV. 1975.	45	.....	50
	Application for construction permit or license of auxiliary or alternate main transmitter—Auxiliary (if TV). 1975.	45	.....	50
	Application for extension on FCC Form 701—TV. 1975.	45	.....	100
	Application for extension on FCC Form 701—Auxiliary (if TV). 1975.	45	.....	50
	International Broadcasting: Construction Permits for new stations and major changes in existing stations (if TV). 1975.	45	.....	700
	International Broadcasting Construction. Grant fee for application for Seasonal Schedule (if TV). 1975.	45	.....	Var.
18-26-0004	All other applications in the Broadcast Service—Experimental and Developmental Applications.	1,451	50	100
	Subscription Television			
18-40-0001	Application for Subscription Television Authorizations—Application Filing Fee.	1,459	1000	700
	Assignments and Transfers.			
18-51-0002	Application for assignment of license or transfer of control exclusive of FCC Form 316 applications—Filing, Assignment, Transfer, Grant.	417	Var	Var.
	Assignment & Transfer Grant Fees on Forms 314 and 315: For AM stations and joint assignment or transfer of AM/FM stations, with gross revenues of $400,000 or less, 1975.	417	.....	Var.
	Assignment and Transfer Grant Fees on Forms 314 and 315: For AM stations and joint assignment or transfer of AM-FM stations, with gross revenues greater than $400,000, 1975.	417	.....	Var.
	Assignment and Transfer Grant Fees in Forms 314 and 315; for all FM stations—1975.	417	.....	Var.
	Subscription Television			
	Assignment and Transfer, Grant Fees on Forms 314 and 315: For television stations with Gross Revenues of $800,000 or less, 1975.	417	.....	Var.
	Assignment and Transfer Grant Fees on Forms 314 and 315: For television stations with gross revenue greater than $800,000. 1975.	417	.....	Var.
	Assignment and Transfer Grant Fees on Forms 314 and 315: In all other cases and/or when gross revenue is indeterminable, 1975.	417	.....	Var.
	Special Temporary Authority			
18-60-0001	Special Temporary Authority (STA)	13	25	25
	Annual License Fee			
18-70-0002	Annual License Fees—For AM and FM stations	155	Var	Var.
18-70-0004	Annual License Fees—For television broadcast stations.	155	Var	Var.
	Cable Television Bureau—Cable Television Relay Service			
	Cable Television Relay Service (CARS)—Construction Permit.	287	50	20
	Petitions			
20-20-0001	Petition for Special Relief Section 76.7, 1972	1,554	25	.....
20-20-0002	Petition for Special Relief (Other than that specified below) pursuant to 74.1109.	797	25	.....
20-20-0003	Petition for Experimental Operations (Para 51, 12/68 NPRM and Notice of Inquiry Docket 18397. . .).	1,499	25	.....
20-20-0004	Petition for waiver of Hearings re. Carriage of Distant Signals within Grade A Contour of TV Broadcast in top 100—market. Per proposed commercial (a) UHF station or (b) network affiliated UHF station, distant signal.	769	25	.....
	Certificates of Compliance			
20-30-0001	Certificates of Compliance—Routine, 76.11, 1972	764	35	.....
20-30-0002	Certificate of Compliance—Non-Routine, 76.11, 1972.	3,880	35	.....
	Special Temporary Authority			
20-50-0001	Petition for Special Temporary Authority	104	25	25

Appendix C

Comments Filed in Docket 78-316 Relating to Refund of Fees

Western Union International, Inc.
Broadcast licensees (Fletcher, Heald & Hildreth)
National Association of Broadcasters
NEP Communications, Inc.
AT&T Co.
Metromedia, Inc.
Haley, Bader & Potts
Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
Western Union Telegraph Co.
Eastern Microwave, Inc.
American Satellite Corporation
Special Industrial Radio Service Association, Inc.
KLIX Corporation
MCI Telecommunications Corp.
National Broadcasting Co., Inc.
Dempsey and Koplovitz
Central Committee on Telecommunications of the American Petroleum Institute
Capital Cities Communications, Inc. and LIN Broadcasting Corp.
Broadcast licensees (Koteen & Burt)
Broadcast licensees (Covington & Burling)
GTE Service Corporation
Combined Communications Corp., The Evening News Association, Lee Enterprises, Inc. and Time, Inc.

Western Broadcasting Co., Mesabi Western Corp., Enterprise Broadcasting, Inc. and Holland Broadcasting, Inc.
RCA Global Communications, Inc.
RCA Corporation
Broadcast Financial Management Association
Litton Microwave Cooking
Broadcast licensees (McKenna, Wilkinson & Kittner)
Microband Corp. of America
Broadcast licensees (Wilkinson, Cragun & Barker)
National Telephone Cooperative Association
American Cable & Radio Corp.
Colt Communications, Inc.
Electronic Product Testing, Inc.

[Gen. Docket No. 78-316; FCC 79-68]
[FR Doc. 79-10660 Filed 4-9-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 17 and 222

Caribbean Monk Seal; Listing as an Endangered Species

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and the U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Final Regulation.

SUMMARY: The National Marine Fisheries Service ("NMFS") has determined the Caribbean monk seal (*Monachus tropicalis*) to be an endangered species throughout its range, pursuant to Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (the "Act"). This species is added to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and 50 CFR 222.23.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. William Aron, Director, Office of Marine Mammals and Endangered Species, National Oceanic and Atmospheric Administration, Washington D.C. 20235 (202-634-7461).

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1977, NMFS/FWS published a proposal to list the Caribbean monk seal as an endangered species under the Act (42 FR 9402). This action was taken pursuant to Section 4(a) of the Act which states:

The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

With the exception of enforcement responsibilities for certain plants, the Act defines "Secretary" to mean either the Secretary of the Interior or the Secretary of Commerce. Most marine species, including the Caribbean monk seal, are the sole responsibility of the Secretary of Commerce. The authority of the Secretary has been delegated to the Assistant Administrator for Fisheries, NMFS. An extensive aerial survey of the Caribbean monk seal's former habitat in the Gulf of Mexico and Caribbean Sea was conducted by Karl W. Kenyon for the Department of the Interior during March 1973. While this survey indicates that the species may be extinct, in the event that some remnant members of the Caribbean monk seal species do exist in remote parts of its range, NMFS believes it should be listed and thereby provided protection under the Act. A paper entitled "Caribbean Monk Seal, *Monachus tropicalis*" (IUCN Supplementary Paper No. 39, April 1973) by Dale W. Rice, NMFS, provided the basis for most of the statements and facts cited below.

The findings in support of the Assistant Administrator's determination are summarized herein and described under each of the five criteria of Section 4(a) of the Act.

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* The former distribution of this species encompassed shores and islands of the Caribbean Sea and Gulf of Mexico, from the Bahamas west (including the Florida Keys and Cuba) to the Yucatan Peninsula, south along the east coast of Central America and through the western Caribbean Sea, and eastward in the northern Caribbean as far as the northern Lesser Antilles. It was known to occur in Jamaican waters and on the Seranilla Bank in the western Caribbean as late as 1952. Seclusion from areas frequented by man would, in all probability, be characteristic of the location of any surviving Caribbean monk seals. It is believed that the habitat requirements of this species are quite similar to those of the Hawaiian monk seal—shallow lagoons and reefs for feeding areas; sandy beaches for hauling-out grounds (i.e., areas used by the seals for resting); and permanent islets or beaches above high tide, and adjacent to shallows, for pupping areas. Although Caribbean monk seals are seemingly tame and allow a close approach, the seal historically has abandoned habitat utilized by man for fishing or other purposes. Thus, reduction in suitable habitat due to man's encroachment has contributed to the decline or extinction of this species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* A major factor responsible for the severe reduction or extinction of the Caribbean monk seal has been exploitation by man. These animals are sluggish, apparently unsuspicious, and not easily alarmed. Their hauling-out beaches are low and sandy. Because such beaches may accommodate small boat landings, the Caribbean monk seal can be readily approached and easily killed. Reports indicate that this species has been exceedingly scarce and indiscriminately killed since early Spanish exploration of the western hemisphere. They have been exploited commercially for their hides and oil.

(3) *Disease or predation.* The Caribbean monk seal has evolved on remote islands where they have not been subject to terrestrial predators. In the water, however, predation by sharks may be a factor, although this is not believed to have caused significant mortality in this species. Disease is not known to be a factor in reduction or extinction of this species.

(4) *The inadequacy of existing statutory mechanisms.* Caribbean monk seals are protected under the Marine Mammal Protection Act of 1972, as amended, but that Act makes no provision for protection of habitat considered critical to the species.

(5) *Other natural or man-made factors affecting its continued existence.* There are no other known factors significantly affecting this species.

SUMMARY OF COMMENTS AND RECOMMENDATIONS: No comments were received by NMFS pertaining to the proposed listing.

Effect of This Rulemaking

Section 9(a) of the Act sets forth a series of general prohibitions which apply to all endangered species of fish and wildlife.

With respect to any endangered species listed pursuant to Section 4 of the Act, it is unlawful for any person subject to the jurisdiction of the United States to:

(1) Import any such species into, or export any such species from, the United States;

(2) Take any such species within the United States or the territorial sea of the United States;

(3) Take any such species upon the high seas;

(4) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (2) or (3) above;

(5) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(6) Sell or offer for sale in interstate or foreign commerce any such species; or

(7) Violate any regulations pertaining to such species and promulgated by the Secretary pursuant to authority provided by the Act.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Section 4(a)(1), as amended on November 10, 1978, also states that "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat." Since the very existence of the Caribbean monk seal is now open to doubt, no critical habitat can presently be designated for this species. Section 3(5)(A), as amended on November 10, 1978, limits "critical habitat" to "specific areas within the geographical area occupied by the species at the time it is listed * * *" or "specific areas outside the geographical area occupied by the species at the time it is listed * * *" Because the Caribbean monk seal is not known to presently inhabit any geographical area, it is impossible to specify any critical habitat. If the location of a population of Caribbean monk seal is discovered, the Assistant Administrator for Fisheries may propose critical habitat in the future, as appropriate. NMFS invites the submission to it of any and all information, including maps, concerning the existence of the Caribbean monk seal or the location of its critical habitat. Any information submitted on these matters will be considered.

National Environmental Policy Act

The Assistant Administrator has determined that the proposed designation of the Caribbean monk seal as an endangered species is not a major Federal action which would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. An environmental assessment pertaining to this determination is available for public review in the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. or may be obtained by writing the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Executive Order 12044

The Assistant Administrator has made an initial determination that this rulemaking is not significant in accordance with established agency criteria and that preparation of regulatory analysis is not required.

Regulation Promulgation

Accordingly, 50 CFR Chapter I, Part 11 and Chapter II, Part 222, are amended as follows:

§ 17.11 [Amended]

(1) The list of endangered and threatened wildlife in 50 CFR 17.11 is amended by adding the Caribbean monk seal under the class entitled "mammals" and immediately before "Seal, Hawaiian monk", as follows:

Species		Range					
Common name	Scientific name	Population	Known distribution	Portion endangered	Status	When listed	Special rules
*	* *	*	*	*	*		
Seal: Caribbean monk	*Monachus tropicalis*	N/A	Caribbean Sea and Gulf of Mexico.	Entire	E		N/A
*	* *	*	*	*	*		

§ 222.23 [Amended]

(2) 50 CFR 222.23(a) is amended by adding "Caribbean monk seal (*Monachus tropicalis*)" immediately before "Hawaiian monk seal (*Monachus schauinslandi)*" in the second sentence.

Dated: February 6, 1979.

Jerry L. Leitzell,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

Lynn A. Greenwalt,
Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-10937 Filed 4-9-79; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 70
Tuesday, April 10, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 329]

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Rule.

SUMMARY: The FDIC is considering amendments to its interest rate regulations as follows: (1) Creation of a new category of nonnegotiable time deposit with a fixed maturity of 5 years in a minimum amount of $500, the interest rate to be one and one-quarter percent (one percent for mutual savings banks) below the average 5-year rate based on the yield curve for Treasury securities; (2) An amendment which would provide for a lump sum interest bonus on the minimum balance held in individual or certain nonprofit organization savings accounts over a 1-year period; (3) Adjustment of all minimum denomination requirements from $1,000 to $500 for deposits of under $100,000 under the interest regulations, except for the $10,000 minimum required for variable rate "money market" time deposits; and (4) A $500 minimum amount nonnegotiable "rising rate" 8-year time deposit whose rate increases the longer funds remain on deposit. The withdrawal penalty would be adjusted on the proposed 5-year and rising rate instrument categories.

DATE: Comments should be received on or before May 4, 1979.

ADDRESSES: Written comments should be directed to Hoyle L. Robinson, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Senior Attorney, or Douglas H. Jones, Attorney, Bank Regulation Section, Legal Division (202–389–4324 or 202–389–4433), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The Federal financial institution regulatory agencies have been concerned with the relatively low return to small savers on bank deposit obligations. The maximum return on ordinary savings deposits held in insured nonmember mutual savings banks is now 5¼ percent. Ordinary savings deposits held in commercial banks may bear a maximum rate of interest of only 5 percent. Negotiated rate treatment (*i.e.*, no rate ceiling) is accorded only on time deposits of $100,000 or more. Rates equivalent to the average auction discount rate on 6-month Treasury bills are accorded on a special category of 6-month time deposit in a minimum amount of $10,000. However, $100,000 and over time deposits are primarily institutional deposits, and many small savers do not have $10,000 or more to invest in the 6-month category of deposit.

In order to enhance the return to small savers, FDIC, in coordination with the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board, is considering certain amendments to its interest rate regulations. One of more of these amendments may be adopted in present or revised form.

The first of these amendments is primarily for the benefit of persons who are mainly concerned with maximum rate of return and are in a position to commit funds for relatively long periods. This amendment would, if adopted, establish a new category of nonnegotiable time deposit in a minimum amount of $500 with a fixed maturity of 5 years (no more, no less). The ceiling on this deposit category would, in the case of commercial banks, be one hundred twenty-five basis points (one and one-quarter percent) below the average five-year rate based on the yield curve for Treasury securities as determined by the United States Treasury. In the case of thrift institutions, including insured nonmember mutual savings banks, the ceiling would be one hundred basis points below this rate (one percent). Thus, the one-quarter percent thrift/commercial differential would remain in place as to this proposed new deposit category.

The ceilings for the new instrument would change once each month, effective the first Thursday of the month and would be based on the average 5-year rate based on the yield curve for the preceding calendar week. This rate would be announced monthly on the Monday preceding the Thursday effective date.

The ceiling on both the special IRA/Keogh and public unit deposit account categories would remain at eight percent for both commercial banks and thrift insititutions. However, IRA and Keogh and Public funds are eligible for deposit in the new category, provided the maturity and amount requirements pertaining to the new category are met.

It is anticipated that compounding of interest will be permitted as to the new category. All other regulations pertaining to time deposits would be applicable to the new category. A related amendment will provide for modification of the present early withdrawal penalty on the new 5-year instrument. Under the modified penalty, there would be a forfeiture of at least 6 months interest with no reduction in the rate of interest. This would be in lieu of the present regulation which requires forfeiture of 3-months interest and reduction of interest to no more than the maximum savings rate from the date of deposit.

The second proposed change in FDIC's regulations would permit a lump sum interest bonus on the minimum balance held in an individual's savings account over a specified period of time. The proposal provides for a bonus of one-half percent of the minimum balance held over a period of 1 year. Eligibility for the bonus deposit would be restricted to individuals and charitable and nonprofit and educational entities. Modification of existing accounts would be permitted, but the bonus would be prospective only.

The third proposed amendment would adjust all minimum denomination requirements contained in Part 329 applicable to deposits of under $100,000, except for the $10,000 minimum required for variable rate time deposits keyed to the auction discount rate on Treasury bills. As now proposed, the adjustment would lower the present minimum denomination requirement from $1,000 to $500.

A fourth proposed amendment would establish a new $500 minimum "rising rate" category of nonnegotiable time

deposit, whereby the rate paid on the deposit would increase in proportion to the time the funds remained on deposit. For example, funds on deposit for one year or less would earn six percent interest (six and one-quarter percent in a mutual savings bank). Funds on deposit for over one year to and including 2 and ½ years would earn six and one-half percent in a commercial bank and six and three-quarter percent in a mutual savings bank; funds on deposit for over 2 and ½ years, to and including 4 years would earn seven percent and seven and one-quarter percent interest respectively; funds on deposit for over 4 years, to and including 5 years would earn seven and one-half and seven and three-quarter percent respectively, and funds on deposit for over 5 years to 8 years would earn eight and eight and one-quarter percent respectively. There would be no restrictions on eligibility for the new instrument.

The withdrawal penalty would also be modified as to this instrument. For the first year funds were on deposit, a complete or partial withdrawal would require forfeiture of 3 months interest on the amount withdrawn. No penalty would be assessed after funds had been on deposit for 1 year or more.

The FDIC is particularly interested in receiving comments in the following areas:

On the Proposed Bonus Savings Deposit

(1) Should the bonus be an annual payment of one-half of one percent on savings deposits held for a 1-year period, or should the bonus be a semi-annual payment of one-quarter of one percent for deposits held for a 6-month period;

(2) Should banks be allowed to permit withdrawals from bonus accounts by automatic transfer, telephone transfer, third-party bill-payer service, and by negotiable order of withdrawal where permitted by law. Under present FDIC regulations such withdrawals are allowed for regular savings deposits;

(3) Should banks be permitted to modify the terms of existing savings accounts to incorporate the interest bonus feature;

(4) The operational difficulties that may be encountered if this new category is adopted, including the time necessary to implement appropriate changes; and

(5) Whether the interest bonus should be increased where funds are on deposit for more than one year.

On the 5-year Variable Rate Certificate

(1) The 5-year maturity; should it be more or less?

(2) Basing the ceiling rate on the average 5-year rate based on the yield curve on United States Treasury obligations; should there be some other basis?

(3) Establishing the ceiling rate at one and one-quarter percent (one percent for thrifts) below the average 5-year rate based on the yield curve on Treasury obligations;

(4) Establishing the new ceiling rate monthly as opposed to weekly or quarterly;

(5) Permitting compounding of interest;

9(6) No required minimum denomination;

(7) The $500 minimum denomination.

On the Modified Penalty

Should the proposed 6-months penalty applicable to the proposed new 5-year instrument be extended to all time deposits, or should it be confined to the new 5-year instrument as proposed?

On the Rising Rate Deposit

(1) The eight-year maturity;

(2) The rising rate ceiling schedule;

(3) The $500 minimum denomination;

(4) Permitting additions to the account during the first year;

(5) Operational difficulties, if any, associated with the proposed deposit category; and

(6) The three-month early withdrawal interest penalty. Should the penalty be six-months loss of interest as proposed for the new 5-year time deposit?

Pursuant to its authority under Sections 9 and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1819 and 1828), and after coordination with the Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board, it is proposed that 12 CFR 329.4, 329.6 and 329.7 be amended as follows:

1. Section 329.4(d) is amended by adding two sentences at the end thereof as follows:

§ 329.4 Payment of time deposits before maturity.

* * * * *

(d) *Penalty on payment of time deposits before maturity.* *** [11b] *** [11b-1] *** Notwithstanding any other provisions of this section, in the event of payment before maturity of all or any portion of a time deposit issued pursuant to the provisions of § 329.6(b)(6) or § 329.7(b)(11), the depositor shall forfeit all interest on the amount withdrawn earned from the date of deposit or for six months, whichever is less. In the event of payment before maturity of all or part of any time deposit established pursuant to the provisions of § 329.6(e) or § 329.7(b)(12), the minimum penalty shall be a forfeiture of 3-months interest on the amount withdrawn or interest since the date of deposit, whichever is less, if the funds have been on deposit less than 1 year. If the funds to be withdrawn on this category of deposit have remained on deposit for 1 year or more, no penalty need be assessed.

* * * * *

2. Section 329.6 is amended by revising § 329.6(b)(2), adding a new subparagraph (6) to paragraph (b) thereof and adding new paragraphs (d) and (e) as follows:

§ 329.6 Maximum rates of interest payable on time and savings deposits by insured nonmember banks other than mutual savings banks.[13]

* * * * *

(b) *Deposits of less than $100,000.* ***

(2) *Deposits of $500 or more with maturities of four years or more.*[13a] No insured nonmember bank shall pay interest on any time deposit of $500 or more with a maturity of 4 years or more at a rate in excess of the applicable rate under the following schedule:

* * * * *

(6) *Variable rate time deposits of $500 or more with maturities of five years.* A nonmember bank may pay interest on any nonnegotiable time deposit of $500 or more with a maturity of exactly 5 years that is issued on or after the first Thursday of every month at a rate not to exceed one and one-quarter percent below the average 5-year rate based on the yield curve for United States Treasury securities as determined by the United States Department of the Treasury immediately prior to such first Thursday. The average 5-year rate based on the yield curve will be rounded by the United States Treasury to the nearest five basis points. A bank may offer this category of deposit to all depositors.

* * * * *

(d) *Bonus savings deposits.* A nonmember bank may pay interest at a rate not to exceed five percent on a savings deposit that consists of funds in which the entire beneficial interest is held by one or more individuals, or by a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or similar purposes, and not operated for profit. A

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* ***

[11b] ***

[11b-1] ***

[13] ***

[13a] ***

nonmember bank may inform such depositors that it will pay, once every 12 months, additional interest at a rate not to exceed one-half of one percent on savings funds that will remain on deposit continuously for a subsequent 12-month period. However, a nonmember bank may pay such bonus only after such savings funds have been on deposit continuously for the 12-month period.

(e) *Rising rate time deposits.* On a nonnegotiable rising rate certificate of $500 or more with a maximum term or qualifying period of 8 years, the annual rate of return shall not exceed the rate set forth below during the period indicated:

6%—during the first year of the account.
6½%—thereafter, during the period up to the end of the 30th month of the account.
7%—thereafter, during the period up to the end of the fourth year of the account.
7½%—thereafter, during the period up to the end of the fifth year of the account.
8%—thereafter, until maturity at the end of the eighth year of the account.

Additions may be made to the account during the first year and any such additions shall not affect the maturity date of the deposit.

3. Section 329.7 is amended by revising § 329.7(b)(4) thereof, and by adding new subparagraphs (10), (11), and (12) as follows:

§ 329.7 Maximum rates of interest or dividends payable on deposits of insured nonmember mutual savings banks.[14]

(a) * * *

(b) *Maximum rates payable*—(1) *General.* (i) * * *

(ii) * * *[14a]

* * * * *

(4) *Time deposits of $500 or more with maturities of four years or more.*[14b] No insured nonmember mutual savings bank shall pay interest or dividends on any time deposit of $500 or more with a maturity of 4 years or more at a rate in excess of the applicable rate under the following schedule:

* * * * *

(6) * * *[14c]

* * * * *

(10) *Bonus savings deposits.* A nonmember mutual savings bank may pay interest at a rate not to exceed five and one-quarter percent on a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals, or by a corporation, association or other organization operated primarily for religious, philanthrophic, charitable, education, fraternal, or similar purposes, and not operated for profit. A nonmember mutual savings bank may inform such depositors that it will pay, once every 12 months, additional interest at a rate not to exceed one-half of one percent on savings funds that will remain on deposit continuously for a subsequent 12-month period. However, a nonmember mutual savings bank may pay such bonus only after such savings funds have been on deposit continuously for the 12-month period.

(11) *Variable rate time deposits of $500 or more with maturities of five years.* A nonmember mutual savings bank may pay interest on any nonnegotiable time deposit of $500 or more with a maturity of exactly 5 years that is issued on or after the first Thursday of every month at a rate not to exceed one percent below the average 5-year rate based on the yield curve for United States Treasury securities as determined by the United States Department of the Treasury immediately prior to such first Thursday. The average 5-year rate based on the yield curve will be rounded by the United States Department of the Treasury to the nearest five basis points. A nonmember mutual savings bank may offer this category of deposit to all depositors.

(12) *Rising rate time deposits.* On a nonnegotiable rising rate certificate of $500 or more with a maximum term or qualifying period of 8 years, the annual rate of return shall not exceed the rate set forth below during the period indicated:

6¼%—during the first year of the account.
6¾%—thereafter, during the period up to the end of the 30th month of the account.
7¼%—thereafter, during the period up to the end of the fourth year of the account.
7¾%—thereafter, until maturity at the end of the fifth year of the account.
8¼%—thereafter, until maturity at the end of the eighth year of the account.

Additions may be made to the account during the first year and any such additions shall not affect the maturity date of the deposit.

By Order of the Board of Directors.

Dated: April 3, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Acting Executive Secretary.

[FR Doc. 79-10967 Filed 4-9-79; 8:45 am]

BILLING CODE 6714-01-M

14 * * *
14a * * *
14b * * *
14c * * *

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

Small Business Investment Companies; Proposed Regulations Effectuating Pub. L. 95-507

AGENCY: Small Business Administration.

ACTION: Proposed rules.

SUMMARY: These proposed regulations are intended to effectuate provisions of Pub. L. 95-507, 92 Stat. 1757, October 24, 1978, that affect Small Business Investment Companies (SBICs). Two of Pub. L. 95-507's amendments to the Small Business Investment Act (Act), 15 U.S.C. 661, *et seq.*, apply to all SBICs, whether licensed under section 301(c) or under section 301(d) of the Act: (1) No SBIC license may be issued on or after October 1, 1979, to any applicant unless it has a minimum private capitalization of $500,000; (2) in addition to investments presently permitted for funds not reasonably needed by an SBIC for its day-to-day operations, an SBIC may purchase certificates of deposit issued by, or maintain a savings account in, a financial institution insured by the Federal Savings and Loan Insurance Corporation, in amounts in excess of the insurance limit. Other provisions of Pub. L. 95-507 amending the Act effect only those SBICs licensed under the authority of section 301(d). These amendments (1) permit section 301(d) Licensees to be organized in the form of limited partnerships; (2) authorize SBA to purchase nonvoting 3 percent cumulative Preferred Securities in increased amounts from corporate section 301(d) Licensees; (3) eliminate SBA's authority to require section 301(d) Licensees that had sold Preferred Securities to SBA before October 24, 1978, to repay the "dividend subsidy" before dividends may be paid, or other distribution made, to other equity investors in the Licensee. The "dividend subsidy" is the difference between dividends paid by the Licensee at the annual 3 percent rate and the amount the Licensee would have paid had it instead sold SBA 15 year debentures bearing interest at the rate in effect on the date of sale, determined pursuant to sec. 303(b) of the Act; and (4) relieve section 301(d) Licensees that have sold debentures to SBA bearing a subsidized rate of interest from any obligation to repay the "interest subsidy"—the difference between the subsidized rate (determined pursuant to sec. 317 of the Act) and the rate determined at the date of sale pursuant to sec. 303(b) of the Act.

DATE: Comments may be submitted in triplicate on or before June 11, 1979.

ADDRESS: Submit comments to: Peter F. McNeish, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Peter F. McNeish, Deputy Associate Administrator for Investment, 202–653–6584.

SUPPLEMENTARY INFORMATION: Prior to October 24, 1978, limited partnerships could obtain a license only under the authority of section 301(c) of the Act; section 301(d) Licenses could be issued only to corporations. Pub. L. 95–507 authorized SBA to issue licenses under the authority of section 301(d) to limited partnerships. The first two proposed amendments reflect this broadening of SBA's authority and are self-explanatory.

The third proposed amendment to the regulations makes three changes in § 107.101(d), two of which reflect a statutory change in the minimum private capitalization required of all applicants for an SBIC license.

Sections 107.101(d) (i) and (2) have been amended to reflect the fact that on and after October 1, 1979, SBA will have no authority to issue a License to any applicant whose private capitalization is less than $500,000. This qualification applies also to applications filed before October 1, 1979; there will be no grandfather rights for applicants who have filed before October 1, 1979, regardless of the reasons underlying SBA's failure to issue a License before that date. No exceptions may be made.

Section 107.101(d)(2) has also been amended to delete language that applied only with respect to funds paid into or irrevocably committed to a Licensee before July 5, 1973. This deletion is of an editorial nature, with no effect on the substantive rights of any existing Licensee.

The fourth proposed amendment applies only to section 301(d) Licensees. In addition to changes of a purely editorial nature, § 107.205 has been revised to reflect changes in the Act.

Section 107.205 would be revised to relieve a section 301(d) Licensee of any obligation to repay the dividend or interest subsidy, as the case may be. Of course, any such repayment obligation would exist only in the case of a section 301(d) Licensee that had sold Preferred Securities or subsidized interest rate debentures to SBA before October 24, 1978. Licensees and applicants for a license whose Articles of Incorporation make provision for repayment of the dividend and/or interest subsidy will not be required to amend the Articles of Incorporation solely to eliminate reference to the dividend and/or interest subsidy.

Section 107.205(d) would be amended to make two significant changes with respect to the purchase of Preferred Securities from a corporate section 301(d) Licensee. It should be noted that Pub. L. 95–507 now confers upon SBA authority to purchase from any corporate 301(d) Licensee—but only from a corporate Licensee—Preferred Securities in an amount up to 100 percent of the Licensee's Private Capital. Prior to the effective date of Pub. L. 95–507 (October 24, 1978), SBA could purchase from a Licensee licensed on or before October 13, 1971, and having Private Capital of less than $300,000, Preferred Securities in an amount no greater than the amount of Private Capital contributed after October 13, 1971; and in the case of a Licensee licensed after October 13, 1971, and having a Private Capital of less than $500,000, SBA's purchase of Preferred Securities could not exceed the difference between $300,000 and $500,000. SBA could purchase Preferred Securities in the amount of 100 percent of Private Capital only if the Licensee's Private Capital was $500,000 or more.

Subject to certain restrictions set forth in Pub. L. 95–507 and implemented in proposed § 107.205(d)(2), SBA has been further authorized to purchase Preferred Securities in amounts in excess of 100 percent of Private Capital, but not to exceed 200 percent of Private Capital, from any Licensee licensed on or before October 13, 1971 (regardless of the amount of such Licensee's Private Capital), and from any Licensee with a Private Capital of $500,000 or more.

However, the amount of Preferred Securities purchased by SBA in excess of 100 percent of any Licensee's Private Capital may not exceed the amount of the Licensee's funds invested in or legally committed to the "Qualified Investments" enumerated in proposed § 107.205(d)(2). The "Qualified Investments" set forth in this proposed section are those set forth in section 101 of Pub. L. 95–507 under the statutory definition of "equity securities". The proposed regulation uses the term "Qualified Investments" in order to avoid confusion with the term "Equity Securities" as it is used in § 107.302(b) of the regulations. The proposed regulation adds to the statutory language intended to make it clear (1) that no Licensee may, through the purchase of Qualified Investments, engage in any business, either directly or as a holding company, other than that of a section 301(d) SBIC or risk liability as a general partner in business; and (2) that Congress listed subordinated debt instruments among "equity securities" in recognition of the fact that subordination is intended to encourage other lenders to extend financing, and not merely to afford a priority to all other creditors, particularly creditors, who are supplier or consultant associates of the Licensee.

Since SBA's authority to purchase Preferred Securities in excess of 100 percent of Private Capital is limited to the amount of the Licensee's Qualified Investment Portfolio, SBA has included a requirement that a Licensee maintain its Qualified Investment Portfolio at that level. The requirement is similar to that imposed with respect to leverage in excess of 300 percent of Private Capital, as set forth in § 107.202(d) of the regulations.

SBA is also authorized to require any Licensee offering Preferred Securities in excess of 100 percent of its Private Capital to demonstrate a need therefor, to insure that SBA funds disbursed to Licensees are, to the maximum degree possible, used to finance Small Concerns.

Section 107.205(c) has been redesignated as proposed § 107.205(f) and revised to clarify certain points. SBA will not permit exchange or conversion of the debentures of any Licensee into Preferred Securities if the transaction would cause SBA to hold Preferred Securities in greater amounts than authorized by statute or applicable regulation. Nor is it intended to permit the exchange or conversion of debentures for Preferred Stock as a method of refinancing debentures in default, or avoiding payment of accrued interest due SBA.

The fifth proposed amendment broadens the coverage of § 107.808 to include "active funds" as well as "idle funds" and reflects the intent of Pub. L. 95–507 to eliminate unnecessary distinction between banks insured by the Federal Deposit Insurance Corporation (FDIC) and savings and loan institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

Proposed § 107.808 requires that all funds of any Licensee, except funds invested in Small Concerns, or in obligations of, or guaranteed by, the United States, or held in a petty cash found not exceeding $500, be deposited in an institution insured by either FDIC or FSLIC. This requirement applies to funds reasonably needed for the day-to-day operations of the Licensee—"active funds"—as well as funds not so needed.

Hence, no funds of an SBIC may be deposited in any institution not subsect to the supervision provided by either FDIC or FSLIC. Since the intent of Section 102 of Pub. L. 95–507 was to eliminate unnecessary distinctions between FDIC-insured and FSLIC-insured institutions, SBA would allow each Licensee to decide whether to maintain a checking account in an commercial bank, or to deposit its "active funds" in a savings account from which it can readily withdraw funds by means of negotiable orders of withdrawal. For the same reason—elimination of unnecessary distinctions between banks and savings and loan institutions—Licensees would be authorized to invest idle funds in certificates of deposit (maturing in not more than one year) issued by any institution insured by FDIC or FSLIC or in a time savings account in any such institution, subject to a withdrawal limitation not exceed one year.

Pursuant to the authority contained in section 308 of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et. seq.*, and Pub. L. 95–507, 92 Stat. 1757, October 24, 1978, Part 107, Chapter I of Title 13, Code of Federal Regulations is proposed to be amended as follows:

1. Section 107.3 is proposed to be amended as follows:

§ 107.3 Definition of Terms.

* * * * *

Section 301(d) Licensee. "Section 301(d) Licensee" means a Licensee organized under a State business or nonprofit corporation statute, or a limited partnership organized pursuant to § 107.4 and licensed pursuant to Section 301(d) of the Act, the investment policy of which is limited to making investments solely in small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

2. Section 107.4(a) is proposed to be amended as follows:

§ 107.4 Limited Partnership SBIC.

(a) *General.* A limited partnership organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act may apply for a license pursuant to Section 301(c) or Section 301(d) of the Act.

3. Section 107.101(d) is proposed to be amended to read as follow:

§ 107.101 Operational Requirements.

* * * * *

(d) *Minimum Capital.* (1) *General.* Every Licensee shall have:

(i) Private Capital of at least $150,000 (For consideration for issuance of Licensee's securities see § 107.805(a)): *Provided, however,* That Private Capital of at least $500,000 shall be required for licensing on or after October 1, 1979; and

(ii) Taking additional resources into account, adequate to assure a reasonable prospect that it will be operated soundly and profitably, and managed actively and prudently in accordance with the Act and regulations. No exceptions to the $500,000 requirement may be granted for any reason whatsoever, including the filing of an application before October 1, 1979.

(2) *Nonprivate funds for licensees.* (i) A Licensee may include nonprivate funds (e.g., funds granted under Title VII of the Community Services Act of 1974, as amended) in its Private Capital for purposes of sections 302(a), 303(c), and 306 of the Act: *Provided, however,* That the minimum capital of $150,000 ($500,000 on or after October 1, 1979) specified by section 302(a)(1) of the Act may not include nonprivate funds and that for leverage purposes nonprivate funds will be included in Private Capital only to the extent that private funds totaling at least ten percent of the nonprivate funds are also included.

(ii) For purposes of this paragraph (d)(2), "nonprivate funds" shall mean funds obtained, directly or indirectly, from another agency or department of the Federal Government or from any State or subdivision thereof, except as limited by Pub. L. 92–512 (commonly known as the General Revenue Sharing Act) and regulations of the Treasury Department, 31 CFR Part 51.

4. Section 107.205 is proposed to be amended as follows:

§ 107.205 Leverage for Section 301(d) Licensees.

(a) *General.* SBA may provide leverage to any section 301(d) Licensee through the purchase or guaranty of debentures, or to a Section 301(d) Licensee organized as a corporation, through the purchase of nonvoting preferred stock (or nonvoting preferred securities other than stock, but only if applicable law precludes the issuance of nonvoting preferred stock) pursuant to application filed under § 107.201(a)(2).

(b) *Charter Requirements for Leveraging.* No leverage will be extended to any section 301(d) Licensee unless the following matters are appropriately provided for in the Licensee's Charter.

(1) *Investment Policy.* Statement of Investment Policy in conformity with section 301(d) of the Act.

(2) *Prior SBA approval to amend charter.* The charter shall not be amended without SBA's prior written approval.

(3) *Additional charter requirements for nonvoting preferred Securities Leverage.* No nonvoting preferred securities may be purchased by SBA from any corporate section 301(d) Licensee unless its charter makes appropriate provision for the following additional matters:

(i) *Payment of dividends to SBA.* Subject to the sound discretion of the board of directors, SBA shall be paid from retained earnings an annual three percent dividends on the par value of its preferred securities. Such dividends shall be payable before any amount shall be set aside for or paid to any other class of stock, and shall be preferred and cumulative, so that, in the event SBA has received less than three percent in any fiscal year, such dividends shall be payable on a preferred basis from subsequent retained earnings without interest thereon. Before any declaration of dividends or any distribution (other than to SBA), all dividends accumulated and unpaid on preferred securities issued to SBA shall be paid.

(ii) *Redemption rights.* A section 301(d) Licensee shall be entitled at its option to redeem in whole or in part preferred securities purchased by SBA, on any dividend date (after giving SBA at least thirty days' written notice) by paying SBA the par value of such securities, but not less than $50,000 par value in any one transaction, and any dividends accumulated and unpaid to the date of redemption.

(iii) *Redemption, liquidation, or distribution of assets.* Before any redemption of securities not purchased by SBA, or liquidation in whole or in part, or any distribution of assets to other stockholders, SBA shall be paid any amounts due pursuant to paragraph (b)(3)(i) of this section, and the par value of its preferred securities: *Provided, however,* That such par value need not be paid to SBA before the distribution of ordinary dividends from retained earnings.

(c) *Sale of debentures to SBA.* Debentures purchased by SBA but not debentures guaranteed by SBA pursuant to section 303(c) of the Act, shall be entitled to a reduced interest rate determined according to Section 317 of the Act. Such debentures shall specify

the interest rates prescribed by sections 317 and 303(b) of the Act, together with the dates between which each applies. With respect to payment of interest SBA shall have the same priority as applies to debentures purchased or guaranteed under section 303(b) of the Act.

(d) *Preferred Securities Leverage in Excess of 100 Percent*—(1) *General.* Subject to the following restrictions, SBA is authorized to purchase preferred securities in amounts in excess of 100 percent of Private Capital, but not in excess of 200 percent of Private Capital:

(i) From any corporate section 301(d) Licensee licensed on or before October 13, 1971; or

(ii) From any corporate section 301(d) Licensee licensed after October 13, 1971, and having Private Capital of $500,000 or more. SBA has no authority to purchase preferred securities in excess of 100 percent of Private Capital from any corporate section 301(d) Licensee licensed after October 13, 1971, if the Private Capital of such Licensee is less than $500,000.

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of 100 percent of Private Capital exceed the amount of the Licensee's funds invested in, or legally committed to, Qualified Investments. As used herein, "Qualified Invetments" means, subject to §§ 107.302 and 107.901, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer.

(3) *Maintenance of Qualified Investment Portfolio.* Any Licensee that has sold preferred securities to SBA in excess of 100 percent of its Private Capital shall maintain its portfolio of Qualified Investments at not less than the amount of such preferred securities. If, as of the end of its fiscal year, the amount of such Licensee's Qualified Investments is less than the amount required by this paragraph (d)(3), of this section, the Licensee shall be deemed in violation of these regulations unless Licensee redeems promptly such excess securities, or unless SBA shall authorize temporarily a lesser amount of Qualified Investments. Such authorization may be granted in appropriate cases such as prepayment or revaluation of Qualified Investments.

(4) *Need for funds.* SBA may require any Licensee offering preferred securities in excess of 100 percent of its Private Capital to demonstrate a need for such funds.

(e) *SBA approval required to increase salaries.* Without prior written SBA approval, a section 301(d) Licensee may not increase the aggregate amount of salaries or other compensation of officers, directors, or employees beyond the amount previously approved by SBA. In applying this provision, compensation to officers, directors, or employees of a wholly-owned corporation shall be deemed paid by Licensee.

(f) *Exchange of outstanding debentures for Preferred Stock.* Subject to the conditions applicable to the issuance of preferred securities to SBA, a section 301(d) Licensee may, in SBA's discretion, retire debentures against issuance of preferred securities to SBA. A section 301(d) Licensee proposing to exchange its outstanding debentures shall be required to pay SBA all unpaid interest accruing to the date of the exchange.

(g) *State law.* SBA does not intend that provisions of this section not mandated by the Act shall supersede existing State law. Whenever a party claims that a conflict exists, it shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

5. Section 107.808 is proposed to be amended as follows:

§ 107.808. Deposits and Investment of Idle Funds.

Except as hereinafter set forth, all funds of a Licensee shall be deposited without delay in an account in a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or by the Federal Savings and Loan Insurance Corporation (FSLIC). Funds of a Licensee not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in (a) direct obligations of, or obligations guaranteed as to principal and interest by, the United States; or (b) in certificates of deposit maturing within one year or less, issued by an institution insured by the FDIC or FSLIC; or (c) deposited in a savings account subject to a withdrawal restriction not to exceed one year in any institution insured by the FDIC or FSLIC: *Provided, however,* That a Licensee may maintain a petty cash fund of up to $500.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1979.

William H. Mauk, Jr.,
Acting Administrator.

[FR Doc. 79-11203 Filed 4-9-79; 8:45 am]
BILLING CODE 8025-01-M

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 140]

Delegation of Authority to Disclose Market Sensitive Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission is proposing to codify the delegation to specific members of its staff of the authority to disclose to proper contract market officers and committee members the full facts regarding any transaction or market operation, which, in the judgment of the staff member, disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers. Under the delegation, the staff member may disclose information on his or her own inititative or in response to a request and, in a particular case, may refer to the Commission the question of whether disclosure should be made. In addition, the Commission is proposing to require that, in the future, disclosure under the delegation will only be made to contract market officials who have signed statements on file with the Commission undertaking that they will not permit information furnished (1) to be further disclosed except to the extent necessary to accomplish the purpose for which the information is made available to them or (2) to be used to advance, directly or indirectly, their own economic interests.

DATES: Written comments on the proposal to be received on or before June 11, 1979. Proposed effective date: Not yet determined.

ADDRESS: Written comments on the propsal should be sent to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Mark Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, telephone (202) 254-7285.

SUPPLEMENTARY INFORMATION: Under Section 8 of the Commodity Exchange Act, as amended ("Act"), Congress has

expressly provided that the Commission may not disclose, except in carefully prescribed circumstances, information in its possession.

"* * * that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers * * *." [1]

This provision is designed to protect the legitimate interests of market participants by according confidential treatment to information regarding their legitimate business activities. In enacting this provision, Congress was concerned that unrestricted disclosure of this information would interfere with both bona fide hedging and necessary speculative activities.[2]

Notwithstanding the non-disclosure provisions of Section 8, Section 8a(6) of the Act specifically authorizes the Commission

"* * * to communicate to the proper committee or officer of any contract market the full facts regarding any transaction or market operation, including the names of the parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers * * *."[3]

Section 8a(6) reflects a Congressional determination that the general need for confidentiality is outweighed by the need for disclosure where the Commission determines that a transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers. In such a situation, the full facts regarding a transaction may be communicated to a proper contract market committee or officer, including information which separately reveals the business transactions or market positions of any person, names of customers or trade secrets.

Of course, it is impossible to list all the situations in which disclosure might be made under section 8a(6). In each case, the question of whether disclosure should be made will turn on the particular facts presented and the evaluation of these facts by the Commission and its staff. For example, the Commission may learn that a single trader has both a large long position in an expiring contract and a significant share of the deliverable supply. Whether disclosure of this information to the contract market involved would be made in this situation would depend upon consideration of such additional factors as the identity of the trader, his trading history, and his expressed intentions.

To codify its present practices, the Commission proposes to adopt Rule 140.72(a), delegating to the following members of its staff the authority to make disclosures under Section 8a(6): The Executive Director; the Deputy Executive Director; the Director of the Division of Trading and Markets; the Deputy Director of the Division of Trading and Markets; the Director of the Office of Market Surveillance and Analysis; the Director of the Division of Economics and Education; the Deputy Director of the Division of Economics and Education; the Director of the Division of Enforcement; the Deputy Director of the Division of Enforcement; the Regional Directors; and the Assistant Regional Directors for Market Surveillance and Analysis.[4] These employees have the necessary expertise to evaluate market conditions and to recognize those situations in which disclosure would be warranted consistent with Commission policy and with the general need to preserve the confidentiality of market sensitive information. In this connection, the Commission emphasizes that disclosure of market sensitive information will not be made on a routine basis and that in particular situations each of these employees may present the matter to the Commission for its determination.

The purpose of the delegation is to reduce the amount of time that elapses between the discovery of a problem that justifies disclosure and the actual communication of information regarding this problem to the contract market involved, in order that the contract market may take prompt and appropriate action to discharge its self-regulatory responsibilities. The speed with which disclosure is made often plays a crucial role in determining the effectiveness of the disclosure. For example, if an impending "squeeze" is discovered, any delay in furnishing information to the contract market in question will necessarily reduce the amount of time that will be available to that contract market to take preventive action. Thus, the delay inherent in the referral to the Commission of question of whether disclosure should be made can at times impair the effectiveness of the disclosure that may be made.[5]

A Commission employee will be authorized to exercise authority under Rule 140.72 on his own initiative or in response to a request by a contract market. The Commission recognizes that the need for disclosure of market sensitive information may at times become apparent to a contract market before the Commission detects it. Contract market requests for information of this nature will not be honored unless all of the requirements prescribed by the delegation have been met, including the requirement that the staff member determine that the contract market is otherwise unable to obtain the information sought without unreasonable delay in the circumstances.

Under Section 8a(6), disclosure may only be made to proper contract market committees and officers. For purposes of Rule 140.72, these contract market officials have been defined to be the chairman of a contract market's business conduct or control committee, or of a committee having similar responsibilities, any member of the committee designated by its chairman, the chief executive officer of the contract market, and any officer of the contract market who is specifically charged with the supervision of the general business conduct of the members of the contract market or of the contract market's audits and investigations staff.

By Rule 140.72(b), the Commission is proposing to require that, in the future, market sensitive information will be disclosed only to contract market officials who have signed statements on file with the Commission which provide that they will not permit any information furnished to them (1) to be further disclosed except to the extent necessary to accomplish the purpose for which the information is furnished or (2) to be used, directly or indirectly, to further their own economic interests. The original signed statement required shall be filed with the Commission's Executive Director and a copy shall be filed with the Regional Director for the region in which the contract market is

[1] Section 8(a) of the Act, as amended by the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 873. Among other things, the 1978 amendments added the phrase "or market positions" to the confidentiality provision of Section 8. The confidentiality provision was originally contained in Section 9 of the Future Trading Act, 42 Stat. 187 (1921); it was subsequently reenacted in the same form in Section 8 of the Grain Futures Act, 42 Stat. 998 (1922), and later in Section 8 of the Commodity Exchange Act, 49 Stat. 1491 (1936).

[2] See, *e.g.*, 61 Cong. Rec. 1321 (1921) (remarks of Congressman Kincheloe).

[3] Section 8a(6) of the Act, 7 U.S.C. 12a(6) (1976), as amended by Pub. L. 95-405, 92 Stat. 874.

[4] These officials are not delegated the authority to subdelegate to other members of the staff the authority to disclose market sensitive information.

[5] In reporting on the legislation that led to the enactment of the Futures Trading Act of 1978, both the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry expressly recognized the importance of communication between the Commission and contract markets under Section 8a(6). See H. Rep. No. 95-1181, 95th Cong., 2d Sess. 18-19 (1978) and S. Rep. No. 95-850, 95th Cong., 2d Sess. 29-30 (1978).

located. The signed statement requirement is designed to emphasize to contract market officials the confidential nature of the information they may receive as well as the responsibilities they assume in receiving the information. In this regard, the Commission points out that Section 9(e) of the Act makes it a felony punishable by a fine of up to $100,000 or imprisonment for five years, or both, for any person to acquire from any Commissioner or from any Commission employee non-public information that may affect or tend to affect the price of any commodity or commodity future and to use the information in any transaction in futures, in an actual commodity, or in a commodity option transaction.[6]

As a matter of practice, Commission employees who disclose information under the delegation promptly prepare a record of the disclosure. Under the delegation, as codified, the Commission has instructed members of the staff to record the name and title of the Commission employee making disclosure, the date of the disclosure, the name and title of the contract market official to whom the information was disclosed, the facts disclosed, the transaction or market operation involved, and the basis for the employee's determination that this transaction or market operation disrupted or tended to disrupt a market or was otherwise harmful or against the best interests of producers and consumers.[7]

Interested persons are invited to participate in this rulemaking proceeding by submitting comments in written form to the Commission at the above address on or before June 11, 1979.

In consideration of the foregoing, the Commission, pursuant to the authority contained in Sections 2(a)(11), 8a(5) and 8a(6) of the Commodity Exchange Act, 7 U.S.C. 4a(j), 12a(5) and 12a(6) (1976), as amended by Pub. L. 95–405, 92 Stat. 865 *et seq.* (1978), hereby proposes to amend Part 140 of Chapter I of Title 17 of the Code of Federal Regulations by adding a new § 140.72 to read as follows:

§ 140.72 Delegation of authority to disclose market sensitive information.

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Commodity Exchange Act, the Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Director of the Division of Trading and Markets, the Deputy Director of the Division of Trading and Markets, the Director of the Office of Surveillance and Analysis, the Director of the Division of Economics and Education, the Deputy Director of the Division of Economics and Education, the Director of the Division of Enforcement, the Deputy Director of the Division of Enforcement, each of the Regional Directors, and each of the Assistant Regional Directors for Market Surveillance and Analysis, the authority to disclose to a contract market official the full facts concerning any transaction or market operation, including the names of the parties thereto, which, in the judgement of the Commission employee, disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by a contract market official. For purposes of this section the term "contract market official" shall mean the chairman of a contract market's business conduct or control committee, or of any committee having similar responsibilities, any member of the committee designated by the chairman, the chief executive officer of a contract market, and any officer of the contract market who is specifically charged with the supervision of the general business conduct of the members of the contract market or of the contract market's audits and investigations staff.

(b) Disclosure under this section shall not be made:

(1) In response to a request by a contract market official unless the commission employee determines that the contract market cannot otherwise obtain the information sought without unreasonable delay in the circumstances, or

(2) To a contract market official who has not filed with the Commission as provided in this paragraph a signed statement which provides that the contract market official will not permit information furnished to him or her under this section (i) to be further disclosed except to the extent necessary to accomplish the purpose for which the information was furnished or (ii) to be used for his or her own direct or indirect economic benefit. The original signed statement required by this paragraph shall be filed with the Executive Director of the Commission, and a copy of the statement shall also be filed with the Regional Director for the region in which the contract market is located.

(c) Notwithstanding the provisions of paragraph (a) of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether disclosure of information should be made.

Issued in Washington, D.C., on April 4, 1979, by the Commission.

Gary L. Seevers,

Acting Chairman, Commodity Futures Trading Commission.

[FR Doc. 79–10947 Filed 4–9–79; 8:45 am]

BILLING CODE 6351–01–M

[6] Section 9(e) of the Act, 7 U.S.C. 13(e) (1976), as amended by Pub. L. 95–405, 92 Stat. 875.

[7] In doing so, the Commission does not intend to bestow upon persons who may be affected by any disclosure, the right to have the propriety of the decision to make that disclosure reviewed by the Commission or by any court.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Ashtabula, Ashtabula County, Ohio

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

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, 4400 Main Street, Ashtabula, Ohio. Send comments to: The Honorable Cliff McClure, Mayor, City of Ashtabula, City Hall, 4400 Main Street, Ashtabula, Ohio 44004.

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 Ashtabula, 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
Lake Erie	Shoreline of community	577
Ashtabula River	Mouth at Lake Erie	577
	Just upstream of East 24th Street.	580
	Just upstream of Main Road	594
	Just upstream of East 46th Street.	601
	Just upstream of Conrail near 48th Street.	604
	Upstream corporate limits	616

(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 30, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI–5371]
[FR Doc. 79–10985 Filed 4–9–79; 8:45 am]
BILLING CODE 4210–01–M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for City of Geneva, Ashtabula County, Ohio

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

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, 81 East Main Street, Geneva, Ohio. Send comments to: Mr. Robert C. Salisbury, City Manager, City of Geneva, City Hall, 81 East Main Street, Geneva, Ohio 44041.

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 Geneva, 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
Cowles Creek	Downstream corporate limit	644
	Just upstream of North Avenue.	647
	Just downstream of Water Street.	651
	Just upstream of Water Street.	654
	Just upstream of East Main Street.	657
	Just downstream of Norfolk and Western Railway.	662
	Just upstream of Norfolk and Western Railway.	671
	Upstream corporate limit	672
Cowles Creek Tributary.	Confluence with Cowles Creek.	659
	Just downstream of Grant Street.	659
	Just upstream of brick garage located about 150 feet upstream of Grant Street.	665
	Just upstream of Erie Street	668
	Just upstream of Pine Street	677
	Just downstream of Liberty Street.	678
	Just upstream of West Union Street.	687
	About 100 feet upstream of Tibbets Street.	688
	Just upstream of Ruth Street.	690
	Just dowstream of intersection of Broadway and State Route 84.	709
	About 400 feet upstream of intersection of Broadway and State Route 84.	712

(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 30, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5372]
[FR Doc. 79-10986 Filed 4-9-79; 8:45 am]
BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Grand Island, Erie County, N.Y.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The notice published on November 3, 1978, at 43 FR 51423 in the **Federal Register**, and in the *Island Dispatch* on January 19, 1979, and January 26, 1979, for Tributary No. 1—confluence with Niagara River, Tonawanda Channel, the elevation was listed as 574. The correct elevation is 571.

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.

(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, 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 30, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4759]
[FR Doc. 79-10983 Filed 4-9-79; 8:45 am]
BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Leverett, Franklin County, Mass.

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 Leverett, 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).

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, Leverett, Massachusetts. Send comments to: Mr. Nancy J. Raskevitz, Chairman, Board of Selectmen, Town of Leverett, Town Hall, Leverett, Massachusetts 01054.

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 Leverett, Massachusetts, 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
Sawmill River	Downstream Corporate Limits—25 feet upstream from crossing.	407
	Dam (approximately ¾ mile upstream from corporate limits):	
	80 feet[1]	460
	80 feet[1]	472
	Dam (approximately ⅝ mile upstream from corporate limits):	
	25 feet[1]	475
	150 feet [2]	484
	Old Coke Kiln Road—50 feet [2].	537
	Old Mill Yard Road [3]	546
	Rattlesnake Gutter Road [3]	570
	Dam (approximately 160 feet upstream from Dudleyville Road):	
	50 feet[1]	624
	55 feet [2]	631
	Confluence with Red Brook	794
	Upstream Corporate Limit	804
Doolittle Brook	Teewaddle Hill Road—55 feet [2].	342
	Shutesbury Road—55 feet [2]	360
	Farm Road [3]	379
Roaring Brook	Confluence with Doolittle Brook.	342
	Cushman Road—65 feet [2]	385
Long Plain Brook	Downstream Corporate Limits.	272
	Bull Hill Road—200 feet [2]	317
	Central Vermont Railroad—105 feet [2].	331

[1] Downstream from centerline.
[2] Upstream from centerline.
[3] 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 30, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5368]
[FR Doc. 79-10981 Filed 4-9-79; 8:45 am]
BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Princeville, Edgecombe County, N.C.

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 Princeville, Edgecombe County, North Carolina. 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, Princeville, North Carolina. Send comments to: Mr. Joe Goodson, Town Manager, Town of Princeville, Town Hall, Princeville, North Carolina 27886.

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 Princeville, North Carolina, 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
Tar River	U.S. Highway 64 Bypass—50 feet [1].	43
	Seaboard Coast Line Railroad—100 feet [1].	43
	U.S. Highway 64—100 feet	43

[1] Upstream 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.)

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 30, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI–5370]

[FR Doc. 79–10984 Filed 4–9–79; 8:45 am]

BILLING CODE 4210–01–M

[24 CFR Part 1917] Proposed Flood Elevation Determinations for the Town of Sherborn, Middlesex County, Mass.

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 Sherborn, Middlesex County. Mass. 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 Town Offices, P.O. Box 8, Sherborn, Mass. Send comments to: Mr. Stephen Petty, Chairman of the Board of Selectmen, Town of Sherborn, Town Offices, P.O. Box 8, Sherborn, Mass. 01770.

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 Sherborn, 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
Course Brook	300 feet downstream of Coolidge Street.	145
	125 feet downstream of Sudbury Aqueduct.	148
	125 feet upstream of Sudbury Aqueduct.	151
	Upstream side of Conrail	155
	Upstream corporate limits	155
Charles River	100 feet upstream of Bridge Street.	122
	Just upstream of Conrail	123
	Upstream corporate limits	123

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary "A"	At confluence with course brook.	151
	At limit of detailed study (downstream of Conrail).	152
Dopping Brook	At confluence with Bogastow Brook.	154
	At Hollis Street	156
	At Washington Street	164
	Just upstream from Brook Street.	164

(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 30, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI–5369]

[FR Doc. 79–10982 Filed 4–9–79; 8:45 am]

BILLING CODE 4210–01–M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Village of Fox River Valley Gardens, McHenry County, Ill.

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

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, Clerk's Office, Route 4, 300 Center Street, Fox River Valley Gardens, Ill. Send comments to: Mr. Chester Zemrus, Village President, Village of Fox River Valley Gardens, Village Hall, Route 4, 300 Center Street, Fox River Valley Gardens, Ill. 60010.

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 Fox River Valley Gardens, 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
Fox River	Within Fox River Valley Gardens.	738

(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 30, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI–5367]

[FR Doc. 79–10980 Filed 4–9–79; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

[29 CFR Part 403]

Labor Organizations Which May File Simplified Annual Financial Reports

AGENCY: Department of Labor.

ACTION: Extension of Comment Period.

SUMMARY: This notice extends the period for comments to the notice, published February 9, 1979 (44 FR 8293), concerning the petition to allow more labor organizations to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as Amended on the simplified Form LM–3 rather than the more detailed Form LM–2 by raising the ceiling from $30,000 total annual receipts to $100,000. The comment period, which was to expire on April 10, 1979, is extended 30 days until May 10, 1979.

DATE: Comments must be received on or before May 10, 1979.

ADDRESS: Submit comments to the Assistant Secretary of Labor for Labor-Management Relations, Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Herbert Raskin (202) 523–7373.

SUPPLEMENTARY INFORMATION: The notice which was published in the **Federal Register** of February 9, 1979 provided a 60 day comment period ending April 10, 1979. The comments received have generally express support for or objections to the petiton with minimal analysis or explanation. Therefore, the comment period is extended 30 days in order to provide interested parties with an additional opportunity to present specific and detailed information concerning the negative and positive aspects of the proposal set forth in the petition, and to suggest possible alternative means to accomplish its purposes, and to indicate whether a public hearing would be advisable.

Signed at Washington, D.C. this 4th day of April 1979.

J. Vernon Ballard,

Acting Assistant Secretary.

[FR Doc. 79-11112 Filed 4-9-79; 8:45 am]

BILLILNG CODE 4510-29-M

[29 CFR Parts 402 and 403]

Responsibility of Labor Organizations To Make Available to Members the Information Contained in Reports Filed With the Department of Labor

AGENCY: Department of Labor.

ACTION: Extension of Comment Period.

SUMMARY: This notice extends the period for comments to the notice published February 9, 1979 (44 FR 8294), concerning the petition to require labor organizations to mail to each member copies of all reports and attachments filed with the Department of Labor pursuant to the Labor-Management Reporting and Disclosure Act of 1959, as Amended. The comment period, which was to expire on April 10, 1979, is extended 30 days until May 10, 1979.

DATE: Comments must be received on or before May 10, 1979.

ADDRESS: Submit comments to the Assistant Secretary of Labor for Labor-Management Relations, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Herbert Raskin (202) 523–7373.

SUPPLEMENTARY INFORMATION: The notice which was published in the **Federal Register** of February 9, 1979 provided a 60 days comment period ending on April 10, 1979. The comments received have generally expressed support for or objections to the petition with minimal analysis or explanation. Therefore, the comment period is extended 30 days in order to provide interested parties with an additional opportunity to present specific and detailed information concerning the negative and positive aspects of the proposal set forth in the petition, to suggest possible alternative means to accomplish its purposes, and to indicate whether a public hearing would be advisable.

Signed at Washington, D.C. this 4th day of April 1979.

J. Vernon Ballard,

Acting Assistant Secretary.

[FR Doc. 79-11113 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[29 CFR Parts 2520 and 2530]

Proposed Regulations Relating to Individual Benefit Reporting and Recordkeeping; Extension of Comment Period

AGENCY: Department of Labor.

ACTION: Notice of extension of comment period.

SUMMARY: The Department of Labor (the Department) is extending the comment period on proposed regulations relating to individual benefit reporting and recordkeeping under the Employee Retirement Income Security Act of 1974 (the Act). The regulations were published in the **Federal Register** on February 9, 1979 (44 FR 8294).

DATE: The comment period is extended through May 10, 1979.

ADDRESS: Written comments (preferably six copies) should be submitted to the Division of Reporting and Disclosure, Pension and Welfare Benefit Programs, Room N–4508, U.S. Department of Labor, Washington, D.C. 20010: Proposed Individual Benefit Reporting and Recordkeeping Regulations.

FOR FURTHER INFORMATION CONTACT: Robert Doyle, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523–8671 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 9, 1979 (44 FR 8294) the Department issued a notice of proposed rulemaking concerning individual benefit reporting and recordkeeping under sections 105 and 209 of the Act, and provided for a 60 day comment period. Because some members of the public need additional time to prepare comments, the Department has received requests for an extension of the comment period. In view of these requests and the importance of the proposed regulations, the Department believes it is appropriate to grant the requested extension.

Accordingly, notice is hereby given that the period of time for the submission of public comments on the proposed regulations relating to individual benefit reporting and recordkeeping proposed on February 9, 1979 (44 FR 8294) is hereby extended through May 10, 1979.

Signed at Washington, D.C. this 6th day of April 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-11124 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[31 CFR Part 8]

Proposed Revision of the Provisions Governing Solicitation by Practitioners before the Bureau of Alcohol, Tobacco and Firearms

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend and revise the advertising and solicitation provisions of the regulations governing practice by attorneys, certified public accountants and enrolled practitioners in representing clients before the Bureau of Alcohol, Tobacco and Firearms. The general purpose of these changes is to permit the expansion of advertising by the professions, consistent with recent judicial determinations and the January 24, 1979 amendments to the regulations governing practice before the Internal Revenue Service on the subject. In addition, the revision places all the solicitation provisions presently in the regulations governing practice before the Burau of Alcohol, Tobacco and Firearms in one section.

DATES: Comments must be received on or before June 11, 1979. The effective date will be the date of publication of the final rule in the **Federal Register.** No hearing is contemplated, but one may be held at a time and place set in a later notice in the **Federal Register** if requested by an interested person desiring an opportunity to comment orally and raising a genuine issue.

ADDRESS: Comments and requests for a hearing should be addressed to the Office of Director of Practice, U.S. Department of the Treasury, Washington, D.C. 20220.

FOR FURTHER INFORMATION, CONTACT: Mr. Leslie S. Shapiro, Director of Practice, 202–376–0767.

SUPPLEMENTARY INFORMATION; 31 CFR Part 8 contains regulations governing the conduct of attorneys, certified public accountants and enrolled practitioners in their practice before the Bureau of Alcohol, Tobacco and Firearms (the Bureau). These regulations presently

include provisions prohibiting the advertising and solicitation of employment in matters related to the Bureau. However, the United States Supreme Court, in *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977), held that an absolute ban on lawyer advertising violated the First Amendment right of free speech and that some forms of lawyer advertising should be permitted. Specifically, the *Bates* decision allowed lawyers to publish fee information, about routine services, in the newspaper. Subsequent Supreme Court decisions, i.e., *Ohralik* v. *Ohio State Bar Association*, 46 USLW 4511 (May 30, 1978) and *In re Primus*, 46 USLW 4519 (May 30, 1978), provided further guidance on the subject of solicitation of employment by attorneys.

These decisions have prompted many professional organizations to re-evaluate their regulations governing advertising and solicitation. Furthermore, the Treasury Department (the Department) has amended the advertising and solicitation provisions governing those who practice before the Internal Revenue Service, 31 CFR Part 10 (Treasury Department Circular No. 230). These amendments were adopted on January 24, 1979 and may be found in 44 FR 4940.

The regulations governing practice before the Bureau are similar to those found in 31 CFR Part 10. In addition, they address both the accounting and legal professions. Accordingly, the Department was guided by the amendments to 31 CFR Part 10 and the ethical guidelines of those professions. The proposed regulations parallel the amendments to 31 CFR Part 10 and reflect, to a large extent, the rules on advertising and solicitation adopted by the American Institute of Certified Public Accountants, the American Bar Association and the National Society of Public Accountants.

Description of Proposed Changes

It is proposed that the absolute ban which prohibits any attorney, certified public accountant or enrolled practitioner from soliciting employment, directly or indirectly, in matters related to the Bureau, be changed.

Section 8.41(a), as proposed, outlines the restrictions on advertising and solicitation by those who practice before the Bureau. This section prohibits the direct or indirect use of any public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement of claim. This prohibition includes statements about the quality of services rendered by the practitioner which cannot be factually verified. Further, uninvited in-person solicitation is generally prohibited except in situations where the solicitation seeks new business from a present or past client in a related matter; where the contents of mailings are designed for the general public; and where certain tax exempt organizations solicit in a non-coercive manner.

Section 8.41(b), as proposed, details those items permissible for inclusion in communications by those who practice before the Bureau.

Section 8.41(c), as proposed, provides guidance as to the advertisement of fee information. This guidance is designed to facilitate the advertisement of fees by practitioners while making such communications more informative to the public and less susceptible to misinterpretation.

Section 8.41(d), as proposed, lists those forms of communication available to the practitioner.

Section 8.41(e), as proposed, amends § 8.35 of the current regulations which prohibits practitioners before the Bureau from accepting employment by, assistance from or sharing fees with any person who solicits business contrary to the provisions in the regulations. The proposed rule would permit the aceptance of employment, fees or assistance from a person or firm in violation of the regulations, provided the practitioner does not, directly or indirectly, act or hold himself out as a Bureau practitioner in connection with that relationship. In addition, the Department wishes to remove the solicitation provisions presently in § 8.35 and place all such provisions under one section.

Drafting Information

The principal author of this amendment is Mr. Leslie S. Shapiro, Director of Practice, Office of the General Counsel, Department of the Treasury, and members of his staff.

Authority

These amendments are proposed under the authority of: Sec. 3, 23 Stat. 258 (31 U.S.C. 1026); 5 U.S.C. 301, 500, 551–559; and Reorganization Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, as amended: unless otherwise noted.

Proposed Amendments to the Regulations

In consideration of the foregoing, it is proposed to amend 31 CFR Part 8 as follows:

Paragraph 1. Section 8.35 is proposed to be revised to read as set forth below:

§ 8.35 Assistance from disbarred or suspended persons and former Treasury employees.

No attorney, certified public accountant or enrolled practitioner shall, in practice before the Bureau, knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before any agency of the Treasury Department;

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person;

(c) Accept assistance in a specific matter from any person who participated personally and substantially in the matter as an employee of the Treasury Department.

Paragraph 2. Section 8.41 is proposed to be revised to read as set forth below:

§ 8.41 Solicitation.

(a) *Advertising and Solicitation restrictions.* (1) No attorney, certified public accountant or enrolled practitioner shall, with respect to any Bureau matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement or claim. For the purposes of this subsection, the prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practitioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the results of the matter.

(2) No attorney, certified public accountant or enrolled practitioner shall make, directly or indirectly, an uninvited solicitation of employment, in matters related to the Bureau. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to: (i) Seeking new business from an existing or former client in a related matter; (ii) solicitation by mailings, the contents of which are designed for the general public; or (iii) non-coercive in-person solicitation by those eligible to practice before the Bureau while acting as an employee, member, or officer of an exempt organization listed in sections 501(c) (3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

(b) *Permissible Advertising.* (1) Attorneys, certified public accountants and enrolled practitioners may publish, broadcast, or use in a dignified manner through any means of communication set forth in paragraph (d) of this section.

(i) The name, address, telephone number, and office hours of the practitioner of firm.

(ii) The names of individuals associated with the firm.

(iii) A factual description of the services offered.

(iv) Acceptable credit cards and other credit arrangements.

(v) Foreign language ability.

(vi) Membership in pertinent, professional organizations.

(vii) Pertinent professional licenses.

(viii) A statement that an individual's or firm's practice is limited to certain areas.

(ix) In the case of an enrolled practitioner, the phrase "enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms."

(x) Other facts relevant to the selection of a practitioner in matters related to the Bureau which are not prohibited by these regulations.

(2) Attorneys, certified public accountants and enrolled practitioners may use, to the extent they are consistent with the regulations in this section, customary biographical insertions in approved law lists and reputable professional journals and directories, as well as professional cards, letterheads and announcements: *Provided*, That (i) attorneys do not violate applicable standards of ethical conduct adopted by the American Bar Association, (ii) certified public accountants do not violate applicable standards of ethical conduct adopted by the American Institute of Certified Public Accountants, and (iii) enrolled practitioners do not violate applicable standards of ethical conduct adopted by the National Society of Public Accountants.

(c) *Fee Information.* (1) Attorneys, certified public accountants and enrolled practitioners may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

(2) Attorneys, certified public accountants and enrolled practitioners may also publish the availability of a written schedule of fees.

(3) Attorneys, certified public accountants and enrolled practitioners shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(d) *Communications.* Communications, including fee information, shall be limited to professional lists, telephone directories, print media, permissible mailings as provided in these regulations, radio and television. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission.

(e) *Improper Associations.* An attorney, certified public accountant or enrolled practitioner may, in matters related to the Bureau, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided*, That an attorney, certified public accountant or enrolled practitioner does not, directly or indirectly, act or hold himself out as authorized to practice before the Bureau in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled practitioner from practice before the Bureau in a capacity other than that described above.

Dated: March 30, 1979.

Robert H. Mundheim,

General Counsel, Department of the Treasury.

[FR Doc. 79-11107 Filed 4-9-79; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 294]

Obtaining Information From Financial Institutions; Rights to Financial Privacy Act of 1978

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing a new directive that will permit certain elements of DoD Components to request financial records from a financial institution pursuant to the Right to Financial Privacy Act of 1978, 92 Stat. 3697, *et seq.*, 12 U.S.C. 3401, *et seq.* This Act prescribes the conditions under which such requests may be made. Specifically, section 1108(2) of the Act requires that the formal written request be authorized by regulations issued by the head of the agency or department. This proposed DoD Directive sets forth the procedures to be used by authorized DoD personnel to obtain financial records.

DATES: Comments must be received on or before May 10, 1979. The Right to Financial Privacy Act of 1978 became effective on March 10, 1979, and the proposed directive was approved as internal interim guidance by the Deputy Assistant Secretary of Defense (Administration's) memorandum of March 6, 1979.

ADDRESS: Submit comments to Mr. W. T. Cavaney, Executive Secretary, Defense Privacy Board, ODASD(A), Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: LTC Aurelio Nepa, Jr., USAF, Staff Director, Telephone: 202-694-3027.

Accordingly, it is proposed that a new Part 294 be added to Chapter I of Title 32 of the Code of Federal Regulations, reading as follows:

PART 294—OBTAINING INFORMATION FINANCIAL INSTITUTIONS

Sec.

294.1 Purpose.
294.2 Applicability and Scope.
294.3 Policy.
294.4 Reporting Requirements.
294.5 Responsibilities.
294.6 Implementation.
294.7 Definitions.
294.8 Procedures for Obtaining Customer Authorization.
294.9 Other Access Procedures.
294.10 Procedures for Releasing Information.
294.11 Procedures for Delay of Notice.
294.12 Requesting for Financial Records in Connection with Foreign Intelligence and Counterintelligence Activities.
294.13 Right to Financial Privacy Act of 1978 Annual Report.
294.14 Emergency Access.
Enclosure No. 1.

Authority: 92 Stat. 3697, *et seq.*, 12 U.S.C. 3401, *et seq.*

§ 294.1 Purpose.

(a) This Part implements 12 U.S.C. 3401, 92 Stat. 3697, Pub. L. 95-630 by prescribing:

(1) Procedures for nonconsensual access to financial records by DoD Components;

(2) Procedures governing individual authorizationa for financial record access;

(3) Procedures for transferring information obtained under 12 U.S.C. 3401 and this Part to other agencies;

(4) Procedures for notifying individuals concerning access to their financial records and for delaying such notice; and

(5) Annual reporting requirements for DoD Components concerning access to financial records of individuals.

§ 294.2 Applicability and Scope.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereinafter referred to as the "DoD Components").

§ 294.3 Policy.

(a) It is the policy of the Department of Defense to obtain personal financial data from financial institutions, to the greatest extent possible, with the consent of the record subject unless obtaining such consent would compromise or needlessly delay a legitimate law enforcement inquiry.

(b) When seeking access to financial records, DoD Components shall comply with this Part and 12 U.S.C. 3401 (See § 294.9).

§ 294.4 Reporting requirements.

DoD Components shall comply with the reporting requirements of § 294.13.

§ 294.5 Responsibilities.

(a) The head of each affected DoD Component shall be responsible for:

(1) Establishing procedures for implementing this Directive within the Component;

(2) Establishing procedures to insure that the report required by § 294.13 is forwarded to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration).

(b) The Deputy Assistant Secretary of Defense (Administration), or designee, shall be responsible for:

(1) Preparing the consolidated DoD annual report required by 12 U.S.C. 3401; and

(2) Providing policy guidance to all components in implementing this Part.

§ 294.6 Implementation.

Each DoD component conducting activities; subject to this Part shall issue and publish in the **Federal Register** as a proposed and final rule their regulations implementing 12 U.S.C. 3401 unless subject to the implementing regulations of another component. Components may incorporate this Part by reference as their substantive requirements, and limit their separate issuances to a description of component responsibilities and procedures.

§ 294.7 Definitions.

(a) *Financial Institution.* Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homstead association (including cooperative banks), credit union or consumer finance institution located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Somoa or Virgin Islands.

(b) *Financial Record.* An original or copy of, or information known to have been derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) *Person.* An individual or a partnership of five or less individuals.

(d) *Customer.* Any person or authorized representative of that person, who used or is using any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, regarding an account maintained in the name of the person.

(e) *Law Enforcement Office.* Any element of a DoD Component identified by the Component head as authorized to conduct law enforcement inquiries.

(f) *Law Enforcement Inquiry.* A lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(g) *Personnel Security Investigation.* Any formal examination, other than a law enforcement inquiry, of the background, personal history, and personal characteristics of a person to determine his or her suitability for employment, access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation.

(h) *Personnel Security Element.* Any element of a DoD Component authorized by the Secretary of Defense to conduct Personnel Security Investigations.

§ 294.8 Procedures for obtaining customer authorization.

(a) When access to a person's financial records is sought, a DoD Law enforcement office of personnel security element seeking such access shall, whenever feasible, obtain the individual's consent to such access.

(b) Any consent obtained under § 294.8(a), shall:

(1) Be in writing;

(2) Identify the particular financial records that are considered to be disclosed;

(3) State that the customer may revoke the authorization at any time before disclosure;

(4) Specify the purpose for disclosure and to which agency the records may be disclosed;

(5) Authorize such disclosure for a period not in excess of three months.

(c) Any individual consent not containing all of the elements listed in § 294.8(b), shall be void.

(d) A copy of any individual consent shall be made a part of the Law Enforcement Inquiry or Personnel Security Investigation file to which it pertains.

§ 294.9 Other access procedures.

(a) *Access by Compulsory Legal Process.*

(1) *Administrative Summons or Subpoena.* DoD Components are without authority to issue an administrative summons or subpoena for access to financial records.

(2) *Search Warrant.*

(i) DoD Components are without authority to obtain or execute search warrants for financial records maintained beyond the limits of military installations. Search warrants may only be obtained and executed by another Government agency authorized by statute to do so. In criminal matters, cognizant legal counsel shall be consulted on the availability and use of search warrants for financial records.

(ii) In any state or territory of the United States, The District of Columbia, Puerto Rico, Guam, American Somoa or Virgin Islands, search warrants signed by installation commanders shall not be used to gain access to financial records.

(3) *Judicial Subpoena.* Judicial subpoenas are issued in connection with a pending judicial proceeding. In such circumstances, cognizant legal counsel shall be consulted on the availability and use of judicial subpoenas.

(b) *Formal Written Requests.*

(1) In appropriate cases, a law enforcement office may issue a Formal Written Request for financial records.

(2) A Formal Written Request may only be made when there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.

(3) A Formal Written Request shall be issued on an official form and shall:

(i) State that it is issued pursuant to the Right to Financial Privacy Act of 1978;

(ii) Describe the specific records to be examined;

(iii) State that access is sought in connection with a legitimate law enforcement inquiry;

(iv) Describe the nature of the inquiry; and

(v) Be signed by the head of the law enforcement office or a designee.

(4) Whenever a Formal Written Request is issued, a copy of the Request shall be personally served upon, or mailed to the last known address of, the record subject, unless a delay of notice has been obtained pursuant to § 294.11. The notice shall be in a form similar to enclosure 1 and shall state with reasonable specificity the nature of the law enforcement inquiry. Such notice shall be personally served at least 10 days or mailed at least 14 days prior to the date on which access is sought.

(5) An official who signs a notice required by § 294.9(b)(4), shall be designated to receive any response from the record subject.

(6) The record subject shall be afforded 10 days to respond to a notice required by § 294.9(b)(4), when personal service is made and 14 days when service is by mail.

(7) Components shall establish procedures to ensure that no access to financial records is attempted prior to the adjudication, prescribed by 12 U.S.C. 3401, of any proper timely objection to such action.

(8) Whenever a record subject fails to object to access to financial records, or an objection is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify to the financial institution, in writing, that such office has complied with the requirements of 12 U.S.C. 3401. No access to any financial records may be had prior to such certification.

§ 294.10 Procedures for releasing information.

(a) Financial records obtained pursuant to this Part shall not be transferred to another agency or department unless the head of the law enforcement office or personnel security element, or delegee, certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained with the agency record copy of the released records.

(b) Unless a delay of notice has been obtained under § 294.11 whenever financial information is transferred under § 294.10(a), the law enforcement office or personnel security element shall within 14 days personally serve or mail to the record subject, at his or her last known address, a copy of the certificate prepared in accordance with § 294.10(a), and the following notice:

"Copies of or information contained in your financial records lawfully in possession of (name of agency) have been furnished to (name of agency) pursuant to the Right of Financial Privacy Act of 1978 for the following purposes: (state reason). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) If a request for release of information pertains to a foreign intelligence or counterintelligence activity, the transferring agency may release the information without notifying the record subject.

§ 294.11 Procedures for delay of notice.

(a) The notice required by § 294.9(b)(4), § 294.10(b), or § 294.14(c) may be delayed for successive periods of ninety days. A delay of notice may only be granted by a court of compentent jurisdiction and only where there is reason to believe that the notice would result in:

(1) Endangering the life or physical safety of any person;

(2) Flight from prosecution;

(3) Destruction of or tampering with evidence;

(4) Intimidation of potential witnesses; or

(5) Otherwise seriously jeopardizing an investigation or official proceeding to the same degree as the circumstances in § 294.11(a) (1) through (4).

(b) Whenever it appears that a delay of notice may be appropriate, cognizant legal counsel shall be consulted and, if necessary, take action to obtain such a delay. Application for delays of notice shall be made with reasonable specificity.

(c) Upon the expiration of any delay obtained pursuant to § 294.11 (a) and (b).

(1) Of a notice required by § 294.9(b)(4), the law enforcement office obtaining such records shall serve personally or mail to the record subject a copy of the process or request and the following notice:

"Records of information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of the court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose with reasonable specificity)";

(2) Of a notice required by § 294.10(b), the law enforcement office of personnel security element transferring such records shall serve personally or mail to the record subject the notice required by § 294.10(b); or

(3) Of a notice required by § 294.14(c), the law enforcement office obtaining financial records shall serve personally or mail to the record subject a copy of the request and the notice required by § 294.14(c).

§ 294.12 Requests for financial records in connection with foreign intelligence and counterintelligence activities.

(a) Except as specified in § 294.12(b), nothing in this Part shall apply to requests for financial records in connection with authorized foreign intelligence and counterintelligence activities.

(b)(1) Whenever a request for financial records is made pursuant to § 294.12(a), a component official designated by the Secretary of Defense or the Secretary of a Military department, as appropriate, shall certify to the financial institution that the requesting component has complied with the provisions of 12 U.S.C. 3401. Such certification shall be made prior to disclosure of any records.

(2) Any component that requests financial records under § 294.12(a) shall submit an annual tabulation of such requests to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), no later than February 15 of each year.

(c) When necessary, a component requesting financial records pursuant to § 294.12(a), may notify the financial institution from which records are sought that the provisions of 12 U.S.C. 3401 prohibit disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

§ 294.13 Right to financial privacy act of 1978 annual report.

(a) Each affected component agency shall compile an annual report setting forth the following for the preceding calendar year:

(1) The number of requests for access, specifying the types of access and any other relevant information;

(2) The number of transfers to other agencies of information obtained pursuant to this Part; and

(3) The number of individual challenges to access and whether those were successful;

(4) The number of applications for delays of notice to the record subject and the officials requesting such delays;

(5) The number of refusals by financial institutions to grant access by category of authorization (e.g.,

Individual Access Authorization; Formal Written Request, etc.).

(b) This report shall be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), no later than February 15 of each year. Negative reports shall also be submitted.

§ 294.14 Emergency access.

(a) Except as provided in § 294.14(b)(c) and (d), nothing in this Part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

(1) Physical injury to any person;

(2) Serious property damage; or

(3) Flight to avoid prosecution.

(b) Whenever access is had to financial records pursuant to § 294.14(a) a component official designated by the Secretary of Defense or the Secretary of a Military Department, as appropriate, shall:

(1) Certify in writing to the financial institution that the component has complied with the provisions of 12 U.S.C. 3401; and

(2) Within five days of obtaining access to financial records, submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access.

(c) After filing of the signed sworn statement required by § 294.14(b)(2) the component that has obtained access to financial records pursuant to § 294.14(a), shall personally serve or mail to the record subject a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained in § 294.11:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or component) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: (state with reasonable specificity the nature of the law enforcement inquiry). Emergency access to such record, was obtained on the grounds that (state grounds)."

Mailings under this paragraph shall be by certified or registered mail to the last known address of the record subject.

(d) The annual reporting requirements of § 294.13 shall apply to any access pursuant to § 294.14(a).

Enclosure 1

Mr./Ms. XXXXX X. XXXX
1500 N. Main Street
Washington, DC 20314

Dear XXXX: Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency/department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: (Specifically list the purpose).

If you desire that such records or information not be made available, you must:

1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reason you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

(List applicable courts)

3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to: (Give title and address).

4. Be prepared to come to court and present your position in further detail.

5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your interest.

If you do not follow the above procedures, upon the expiration of ten days from the date of personal service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorites for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

H. E. Lofdahl, *Director,*
Correspondence and Directives, Washington Headquarters Services, Department of Defense.
April 3, 1979.

[FR Doc. 79-11033 Filed 4-9-79; 8:45 am]
BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Mason Valley/Fernley Area Nonattainment Area Plans

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal, by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted up to June 11, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn.: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plans and EPA's associated Evaluation Reports are contained in document file NAP-NV-5 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Lyon County Commission, Drawer G, Yerington, NV 89447.

City of Yerington, Box 479, Yerington, NV 89447,

Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, NV 89710.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air and Hazardous Materials Division, EPA, Region IX, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, enacted in August 1977, Pub. L. No. 95-95, require States to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required to develop, adopt, and submit to EPA revisions to their SIP, for nonattainment

areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable. The Mason Valley/Fernley Areas have been designated nonattainment for particulate matter.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Mason Valley/Fernley Area Nonattainment Area Plans to EPA as revisions to the Nevada SIP. The Nevada Department of Conservation and Natural Resources coordinated the preparation of the proposed SIP revisions with the Lyon County Commission and the City of Yerington which were designated by the Governor as the air quality planning organizations for the Mason Valley/Fernley Area nonattainment areas. The nonattainment area plans for the Mason Valley/Fernley Area consist of the following major components:

—A basic description of the Federal, State, and local air pollution control requirements both past and present,

—A discussion of the pollutants that exceed the NAAQS, specifying the violations, and health effects,

—An examination of air quality trends through the use of growth projections and emission inventories, as well as a discussion of the topography and meteorology of the area,

—A discussion of air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects, and

—A discussion of the specific strategies for particulate matter control that describes the implementation mechanism and the environmental, social and economic impacts for each strategy.

The plans propose to attain the primary NAAQS for particulate matter by implementation and enforcement of dust ordinances to reduce emissions by stabilizing cleared land, minimizing acres cleared at any one time, minimizing dirt spills on streets, paving/sealing access roads, covering dirt being transported, enclosing stored dirt, and avoiding soil disruption and handling during severe meterological conditions. They also propose to control particulates by paving currently unpaved roads which have high daily traffic, and by preventing new unpaved roads by using street improvement plans and code requirements.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.
2. A provision for expeditious attainment of the standards.
3. A determination of the level of control needed to attain by 1982.
4. Adoption in legally enforceable form of all measures necessary to provide for attainment, or, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.
5. Emission reduction estimates for each adopted control measure.
6. Provisions for reasonable further progress as defined in section 171 of the Clean Air Act.
7. An identification of emissions growth.
8. Provisions for annual reporting with respect to items (4) and (6) above.
9. A permit program for major new or modified sources consistent with Section 173 of the Clean Air Act.
10. An identification of and commitment to the resources necessary to carry out the plan.
11. Evidence of public, local government, and state involvement and consultation.
12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.

Issues

This section discusses whether the plan elements of the Mason Valley/Fernley Area Nonattainment Area Plans satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan are specified. The citations in the comments refer to section 110, and Part D, sections 171–178 of the Clean Air Act, as amended.

1. *Emission Inventory.* The plans include an emission inventory for total suspended particulates identifying emission source categories and their estimated present emissions. The emission inventories appear to be reasonably comprehensive, current, and accurate for air pollution control planning in this area as required by Section 172(b)(4).

2. *Attainment Provision.* The provision of reasonable further progress in the plans represent the incremental reductions needed for expeditious attainment by 1982. Although the currently approved SIP regulations are equivalent to reasonably available control technology for traditional stationary sources, reductions in fugitive dust emissions for nontraditional sources will be necessary if the indicated reasonable further progress lines are to be met. The plans state that emission reductions can result from control of fugitive dust through dust ordinances and road paving schedules to reduce emissions from vehicle traffic.

Due to the unavailability of precise emission factors for these fugitive dust measures, the plans cannot, at this time, quantify the expected emission reductions. The State should provide this information in future annual reports based on findings concerning the local effectiveness of the fugitive dust control tactics. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of additional fugitive dust measures, the provisions of Section 172(a) would be satisfied.

The State requested an extension of 18 months for submittal of plans for attainment of the secondary standards. These requests appear consistent with the provisions of 40 CFR 51.31, since the SIP shows that attainment of the secondary standard will require emission reductions greater than those that would result from the application of all reasonably available control technology.

3. *Level of Control.* The plans use a proportional or "rollback" model to determine emission reductions required to attain the primary standard. This approach appears to be acceptable as the inventories indicate that nontraditional sources are the primary cause of emissions in the areas. If further analysis reveals that emissions are not relatively evenly distributed throughout the planning areas, more sophisticated dispersion modeling may be useful to assist in defining the necessay levels of control.

4. *Legally Adopted Measures/Schedules.* The SIP regulations (approved portions of Article 4—Visible Emissions, and Article 7—Particulate Matter) applicable to industrial particulate sources within the nonattainment areas are determined to be equivalent to reasonably available control technology.

The plans indicate that emission reductions can result from control of fugitive dust through dust ordinances and road paving schedules to reduce emissions from vehicle traffic. Upon EPA's receipt of a commitment to schedules for the study, adopting, and implementation of needed fugitive dust measures, the provisions of section 172(b)(2), 172(b)(8), and 172(b)(10) would be satisfied.

5. *Emission Reduction Estimates.* The plans do not include quantified emission reduction estimates for fugitive dust control measures due to the unavailability of area-specific data on these measures. The state should commit to provide this information in future annual reports based on findings concerning the local effectiveness of fugitive dust control tactics.

6. *Reasonable Further Progress.* The provision of reasonable further progress in the plans appears to be consistent with the intent of section 172(b)(3) and section 171(l), since it represents regular incremental reductions needed for expeditious attainment, with present application of reasonably available control technology and commitments to reduce fugitive dust emissions. The annual report is expected to update the provision for reasonable further progress based upon further evaluations of the emission inventory and the effectiveness of the control measures.

7. *Emissions Growth.* The provisions of section 172(b)(5) appear to be satisfied by the plans' assertion that no major new or modified stationary sources are anticipated for the areas. The plans may be modified to provide for such growth if this condition should change.

8. *Annual Reporting.* The plans do not contain a commitment from the State to submit annual reports regarding reasonable further progress and completion of scheduled plan elements. Upon EPA's receipt of such a commitment from the State, the requirements of section 172(b)(4) would be satisfied.

9. *Permit Program.* Section 172(b)(6) requires a preconstruction review permit program for major new or modified sources conforming to the requirements of section 173. This requirement would be satisfied if the State submits such preconstruction review regulations meeting these Part D provisions.

10. *Resources.* The plans do not contain an identification and a commitment of financial and manpower resources necessary for the plans' implementation. The State has informed EPA that such a commitment is forthcoming. Upon receipt of this essential commitment the requirement of section 172(b)(7) would be met.

11. *Public and Government Involvement.* The plans provide evidence of public, local government, and State involvement and consultation in the planning process. In addition, the plans identify air quality, health, welfare, economic, energy, and social effects of the plans' provisions. In order to satisfy the requirements of section 172(b)(9) concerning consultation, participation, and impacts analysis, the State must also submit summaries of the public comments.

12. *Public Hearing.* The plans conform to section 172(b)(1) and 40 CFR 51.4 since they include evidence that the SIP revisions were adopted by the State after reasonable notice and public hearing.

Public Comments

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the ADDRESSES Section of this notice.

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

(Section 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: March 16, 1979.

Sheila M. Prindiville,
Acting Regional Administrator.

[FRL 1096-4]
[FR Doc. 79-11100 Filed 4-9-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Lander County Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted up to June 11, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file NAP-NV-3 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Lander County Commission, Courthouse, Austin, NV 89502.

Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, NV 89710.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air & Hazardous Materials Division, EPA, Region IX, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, enacted in August 1977, Pub. L. No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required to develop, adopt, and submit to EPA

revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable. Both the Clovers nonattainment area and the Lower Reese River Valley nonattainment area are included in the Lander County Nonattainment Plan. The Lander County area has been designated nonattainment for particulate matter.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Lander County Nonattainment Area Plan to EPA as a revision to the Nevada SIP. Preparation of the proposed SIP revisions was coordinated by the Board of County Commissioners of Lander County, which was designated by the Governor as the air quality planning organization for the Lander Country nonattainment area. The nonattainment area plan for the Lander County area consists of the following major components:

—A basic description of the Federal, State, and local air pollution control requirements both past and present,

—A discussion of the pollutant that exceeds the NAAQS, specifying the violations, and health effects,

—An examination of air quality trends through the use of growth projections and emission inventories, as well as a discussion of the topography and meteorology of the area,

—A discussion of air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects,

—A description of the Lander County Permit System,

—An identification of the overall air quality management planning process, and

—A discussion of the specific strategy for particulate matter control that describes the implementation mechanism, schedule, reasonable further progress, annual reporting, and continuing planning requirements, as well as the environmental, social, and economic impacts for the strategy.

The plan proposes to attain the primary NAAQS for particulate matter through a dust ordinance, and the paving of unpaved roads. The dust ordinance would reduce emissions by controlling removal of surface vegetation, grading, plowing, or any other means of surface disturbance through a permit system stabilizing unpaved haul roads, and covering uncovered stockpiles. The highest usage of unpaved roads in the Battle Mountain area is the Hilltop area which has a combined residential and hauling use. Paving the first four miles of Hilltop Road or paving the two access roads from the currently existing paved portion of Mt. Lewis Road to Hilltop Road, are the two control measures being considered; completion of one of these measures is scheduled for 1982 at the latest.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.

2. A provision for expeditious attainment of the standards.

3. A determination of the level of control needed to attain by 1982.

4. Adoption in legally enforceable form of all measures necessary to provide for attainment or, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.

5. Emission reduction estimates for each adopted control measure.

6. Provisions for reasonable further progress as defined in section 171 of the Clean Air Act.

7. An identification of emissions growth.

8. Provisions for annual reporting with respect to items (4) and (6) above.

9. A permit program for major new or modified sources consistent with section 173 of the Clean Air Act.

10. An identification of and commitment to the resources necessary to carry out the plan.

11. Evidence of public, local government, and state involvement and consultation.

12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.

Issues

This section discusses whether the plan elements of the Lander County Nonattainment Area Plan satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan are specified. The citations in the comments refer to section 110, and Part D, sections 171–178, of the Clean Air Act, as amended.

1. *Emission Inventory.* The plan includes an emission inventory for total suspended particulates identifying emission source categories and their estimated present emissions. The emission inventory appears to be reasonably comprehensive, current, and accurate for air pollution control planning in this area, as required by section 172(b)(4).

2. *Attainment Provision.* The provision of reasonable further progress in the plan represents the incremental reductions needed for expeditious attainment by 1982. Although the currently approved SIP regulations are equivalent to reasonably available control technology for traditional stationary sources, reductions in fugitive dust emissions for nontraditional sources will be necessary if the indicated reasonable further progress line is to be met. The plan states that emission reductions can result from control of fugitive dust through a dust ordinance and a road paving schedule to reduce emissions from vehicle traffic.

Due to the unavailability of precise emission factors for these fugitive dust measures, the plan cannot, at this time, quantify the expected emission reductions. The State should provide this information in future annual reports based on findings concerning the local effectiveness of the fugitive dust control tactics. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of additional fugitive dust measures, the provisions of section 172(a) would be satisfied.

The State requested an extension of 18 months for submittal of a plan for attainment of the secondary standard. This request appears consistent with the provisions of 40 CFR 51.31, since the SIP shows that attainment of the secondary standard will require emission reductions greater than those that would result from the application of all reasonably available control technology.

3. *Level of Control.* The plan uses a proportional or "rollback" model to determine emission reductions required to attain the primary standard. This approach appears to be acceptable as the inventory indicates that nontraditional sources are the primary cause of emissions in the area. If further analysis reveals that emissions are not relatively evenly distributed throughout the small planning area more sophisticated dispersion modeling may be useful to assist in defining the necessary level of control.

4. *Legally Adopted Measures/ Schedules.* The SIP regulations (approved portions of Article 4—Visible Emissions, and Article 7—Particulate Matter) applicable to industrial particulate sources within the nonattainment area are determined to

be equivalent to reasonably available control technology.

The plan indicates that emission reductions can result from control of fugitive dust through a dust ordinance and road paving schedule to reduce emissions from vehicle traffic.

Appendix B of the plan includes an adopted ordinance establishing fugitive dust controls. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of any additional measures necessary for attainment, the requirements of section 172(b)(2), 172(b)(8), and 172(b)(10) would be satisfied.

5. *Emission Reduction Estimates.* The plan does not include quantified emission reduction estimates for fugitive dust control measures due to the unavailability of area-specific data on these measures. The State should commit to provide this information in future annual reports based on findings concerning the local effectiveness of fugitive dust control tactics.

6. *Reasonable Further Progress.* The provision of reasonable further progress in the plan appears to be consistent with the intent of section 172(b)(3) and section 171(1), since it represents regular incremental reductions needed for expeditious attainment, with present application of reasonably available control technology and commitments to reduce fugitive dust emissions. The annual report is expected to update the provision for reasonable further progress based upon further evaluations of the emission inventory and the effectiveness of the control measures.

7. *Emissions Growth.* The provisions of section 172(b)(5) appear to be satisfied by the plan's assertion that no major new or modified stationary sources are anticipated for the area. The plan may be modified to provide for such growth if this condition should change.

8. *Annual Reporting.* The plan contains a commitment from the State to submit annual reports regarding reasonable further progress and completion of scheduled plan elements.

9. *Permit Program.* Section 172(b)(6) requires a preconstruction review permit program for major new or modified sources conforming to the requirements of section 173. This requirement would be satisfied if the State submits such preconstruction review regulations meeting these Part D provisions.

10. *Resources.* The plan does not contain an identification and a commitment of financial and manpower resources necessary for the plan's implementation. The State has informed EPA that such a commitment is forthcoming. Upon receipt of this essential commitment, the requirement of Section 172(b)(7) would be met.

11. *Public and Government Involvement.* The plan provides evidence of pubic, local government, and State involvement and consultation in the planning process. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. In order to satisfy the requirements of section 172(b)(9) concerning consultation, participation, and impacts analysis, the State must also submit a summary of the public comments.

12. *Public Hearing.* The plan conforms to section 172(b)(1) and 40 CFR 51.4, since it includes evidence that the SIP revision was adopted by the State after reasonable notice and public hearing.

Public Comments

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the Addressees Section of this notice.

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

(Section 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a))).

Dated: March 16, 1979.

Sheila M. Prindiville,

Acting Regional Administrator.

[FRL 1096-3]

[FR Doc. 79-11099 Filed 4-9-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Carson Desert Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions, and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal, by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments may be submitted up to June 11, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch; Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file NAP-NV-1 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

City of Fallon, 55 West Williams, Fallon NV 89406.

Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City NV 89710.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory

Section, Air and Hazardous Materials Division, EPA, Region IX, (415) 556–2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, enacted in August 1977, Pub. L. No. 95–95, require states to revise their SIP's for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required to develop, adopt, and submit to EPA revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as espeditiously as practicable. The Carson Desert area has been designated nonattainment for particulate matter.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Carson Desert Nonattainment Area Plan to EPA as a revision to the Nevada SIP. The Nevada Department of Conservation and Natural Resources coordinated the preparation of the proposed SIP revision with the Churchill County Commission and the City of Fallon which were designated by the Governor as the air quality planning organizations for the Carson Desert nonattainment area. The nonattainment area plan for the Carson Desert area consists of the following major components:

—A basic description of the Federal, State, and local air pollution control requirements both past and present;

—A discussion of the pollutant that exceeds the NAAQS specifying the violations, and health effects;

—A brief examination of air quality trends through the use of growth projections and emissions inventories, as well as a discussion of the topography and meteorology of the area,

—A discussion of air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects, and

—A brief discussion of the specific strategy for particulate matter control that describes the implementation mechanism, and the environmental, social, and economic impacts.

The plan proposes to attain the primary NAAQS for particulate matter by implementation and enforcement of dust ordinances to reduce emissions by stabilizing cleared land, minimizing acres cleared at any one time, minimizing dirt spills on streets, paving/sealing access roads, covering dirt being transported, enclosing stored dirt, and avoiding soil disruption and handling during severe meteorological conditions. It also proposes to control particulate matter by paving currently unpaved roads which have high daily traffic, and by preventing new unpaved roads by using street improvement plans and code requirements.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.

2. A provision for expenditious attainment of the standards.

3. A determination of the level of control needed to attain by 1982.

4. Adoption in legally enforceable form of all measures necessary to provide for attainment or, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.

5. Emission reduction estimates for each adopted control measure.

6. Provisions for reasonable further progress as defined in section 171 of the Clean Air Act.

7. An identification of emissions growth.

8. Provisions for annual reporting with respect to items (4) and (6) above.

9. A permit program for major new or modified sources consistent with section 173 of the Clean Air Act.

10. An identification of and commitment to the resources necessary to carry out the plan.

11. Evidence of public, local government, and state involvement and consultation.

12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.

Issues

This section discusses whether the plan elements of the Carson Desert Nonattainment Area Plan satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan are specified. The citations in the comments refer to section 110, and Part D, sections 171–178 of the Clean Air Act, as amended.

1. *Emission Inventory.* The plan includes an emission inventory for total suspended particulates identifying emission source categories and their estimated present emissions. The emission inventory appears to be reasonably comprehensive, current, and accurate for air pollution control planning in this area, as required by section 172(b)(4).

2. *Attainment Provision.* The provision of reasonable further progress in the plan represents the incremental reductions needed for expeditious attainment by 1982. Although the currently approved SIP regulations are equivalent to reasonably available control technology for traditional stationary sources, reductions in fugitive dust emissions for nontraditional sources will be necessary if the indicated reasonable further progress line is to be met. The plan states that emission reductions can result from control of fugitive dust through a dust ordinance and a road paving schedule to reduce emissions from vehicle traffic.

Due to the unavailability of precise emission factors for these fugitive dust measures, the plan cannot, at this time, quantify the expected emission reductions. The State should provide this information in future annual reports based on findings concerning the local effectiveness of the fugitive dust control tactics. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of additional fugitive dust measures, the provisions of section 172(a) would be satisfied.

The State requested an extension of 18 months for submittal of a plan for attainment of the secondary standards. This request appears consistent with the provisions of 40 CFR 51.31, since the SIP shows that attainment of the secondary standard will require emission reductions greater than those that would result from the application of all reasonably available control technology.

3. *Level of Control.* The plan uses a proportional or "rollback" model to determine emission reductions required to attain the primary standard. This approach appears to be acceptable as the inventory indicates that nontraditional sources are the primary cause of emissions in the area. If further analysis reveals that emissions are not relatively evenly distributed throughout the small planning area, more sophisticated dispersion modeling may be useful to assist in defining the necessary level of control.

4. *Legally Adopted Measures/Schedules.* The SIP regulations (approved portions of Article 4—Visible

Emissions, and Article 7—Particulate Matter) applicable to industrial particulate sources within the nonattainment area are determined to be equivalent to reasonably available control technology.

The plan indicates that emission reductions can result from control of fugitive dust through a dust ordinance and a road paving schedule to reduce emissions from vehicle traffic. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of needed fugitive dust measures, the provisions of section 172(b)(2), 172(b)(8), and 172(b)(10) would be satisfied.

5. *Emission Reduction Estimates.* The plan does not include quantified emission reduction estimates for fugitive dust control measures due to the unavailability of area-specific data on these measures. The state should commit to provide this information in future annual reports based on findings concerning the local effectiveness of fugitive dust control tactics.

6. *Reasonable Further Progress.* The provision of reasonable further progress in the plan appears to be consistent with the intent of section 172(b)(3) and section 171(1), since it represents regular incremental reductions needed for expeditious attainment, with present application of reasonably available control technology and commitments to reduce fugitive dust emissions. The annual report is expected to update the provision for reasonable further progress based upon further evaluations of the emission inventory and the effectiveness of the control measures.

7. *Emissions Growth.* The provisions of section 172(b)(5) appear to be satisfied by the plan's assertion that no major new or modified stationary sources are anticipated for the area. The plan may be modified to provide for such growth if this condition should change.

8. *Annual Reporting.* The plan does not contain a commitment from the State to submit annual reports regarding reasonable further progress and completion of scheduled plan elements. Upon EPA's receipt of such a commitment from the State, the requirements of section 172(b)(4) would be satisfied.

9. *Permit Program.* Section 172(b)(6) requires a preconstruction review permit program for major new or modified sources conforming to the requirements of section 173. This requirement would be satisfied if the State submits such preconstruction review regulations meeting these Part D provisions.

10. *Resources.* The plan does not contain an identification and a commitment of financial and manpower resources necessary for the plan's implementation. The State has informed EPA that such a commitment is forthcoming. Upon receipt of this essential commitment the requirement of section 172(b)(7) would be met.

11. *Public and Government Involvement.* The plan provides evidence of public, local government, and State involvement and consultation in the planning process. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. In order to satisfy the requirements of section 172(b)(9) concerning consultation, participation, and impacts analysis, the State must also submit a summary of the public comments.

12. *Public Hearing.* The plan conforms to section 172(b)(1) and 40 CFR 51.4 since it includes evidence that the SIP revision was adopted by the State after reasonable notice and public hearing.

Public Comments

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the Addresses Section of this notice.

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

(Section 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: March 16, 1979.

Sheila M. Prindiville,

Acting Regional Administrator.

[FRL 1096-2]

[FR Doc. 79-11098 Filed 4-9-79; 8:45 am]

BILLING CODE 6560-01-M

[40CFR Part 52]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Winnemucca Segment Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Revisions to the Nevada State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended in 1977, "Plan Requirements for Nonattainment Areas." This notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions and suggests corrections. On April 4, 1979 (44 FR 20372) EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. The general preamble supplements this proposal by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, suggested corrections, and whether the revisions should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATE: Comments may be submitted up to June 11, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn.: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Proposed Revisions/Nonattainment Area Plan and EPA's associated Evaluation Report are contained in document file NAP-NV-7 and are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Humboldt County Board of Commissions, P.O. Box 352, Winnemucca, NV 89445.

Department of Conservation and Natural Resources, 201 S. Fall Street, Carson City, NV 89710.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory

Section, Air and Hazardous Materials Division, EPA, Region IX, (415) 556–2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, enacted in August 1977, Pub. L. No. 95–95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each state to submit to the Administrator a list of the NAAQS attainment status for all areas within the state. The Administrator promulgated these lists, with certain modifications, on March 3, 1978 (43 FR 8962). State and local governments were required to develop, adopt, and submit to EPA revisions to their SIP, for nonattainment areas, by January 1, 1979 which meet the requirements of Part D of the Clean Air Act and which provide for attainment of the NAAQS as expeditiously as practicable. The Winnemucca Segment areas has been designated nonattainment for particulate matter.

Description of Proposed SIP Revisions

On December 29, 1978 the Governor submitted the Winnemucca Segment Nonattainment Area Plan to EPA as a revision to the Nevada SIP. The Nevada Department of Conservation and Natural Resources coordinated the preparation of the proposed SIP revision with the Humboldt County Commission and the City of Winnemucca, which were designated by the Governor as the air quality planning organizations for the Winnemucca Segment nonattainment area. The nonattainment area plan for the Winnemucca Segment area consists of the following major components:

—A basic description of the Federal, State, and local air pollution control requirements both past and present,

—A discussion of the pollutant that exceeds the NAAQS, specifying the violations, and health effects,

—An examination of air quality trends through the use of growth projections and emission inventories, as well as a discussion of the topography and meteorology of the area,

—A discussion of air quality control measures that examines feasibility, costs, technical effectiveness, and enforcement aspects, and

—A discussion of the specific strategy for particulate matter control that describes the implementation mechanism, schedule, and the environmental, social and economic impacts for the strategy.

The plan proposes to attain the primary NAAQS for particulate matter by implementation and enforcement of dust ordinances to reduce emissions by stabilizing cleared land, minimizing acres cleared at any one time, minimizing dirt spills on streets, paving/sealing access roads, covering dirt being transported, enclosing stored dirt, and avoiding soil disruption and handling during severe meteorological conditions. It also proposes to control particulate matter by paving currently unpaved roads which have high daily traffic, and preventing new unpaved roads by using street improvement plans and code requirements.

Criteria for Approval

The following list summarizes the basic requirements for Nonattainment Area Plans.

1. An accurate inventory of existing emissions.
2. A provision for expeditious attainment of the standards.
3. A determination of the level of control needed to attain by 1982.
4. Adoption in legally enforceable form of all measures necessary to provide for attainment or, where adoption by 1979 is not possible, a schedule for development, adoption, submittal, and implementation of these measures.
5. Emission reduction estimates for each adopted control measure.
6. Provisions for reasonable further progress as defined in section 171 of the Clean Air Act.
7. An identification of emissions growth.
8. Provisions for annual reporting with respect to items (4) and (6) above.
9. A permit program for major new or modified sources consistent with Section 173 of the Clean Air Act.
10. An identification of and commitment to the resources necessary to carry out the plan.
11. Evidence of public, local government, and state involvement and consultation.
12. Evidence that the proposed SIP revisions were adopted by the state after reasonable notice and public hearing.

Issues

This section discusses whether the plan elements of the Winnemucca Sigment Nonattainment Area Plan satisfy the basic criteria for approval. The paragraph numbers correspond to the preceding section, Criteria for Approval. Where a significant plan discrepancy is identified, recommendations for revision of the plan are specified. The citations in the comments refer to section 110, and Part D, sections 171–178, of the Clean Air Act, as amended.

1. *Emission Inventory.* The plan includes an emission inventory for total suspended particulates identifying emission source categories and their estimated present emissions. The emission inventory appears to be reasonably comprehensive, current, and accurate for air pollution control planning in this area, as required by section 172(b)(4).

2. *Attainment Provision.* The provision of reasonable further progress in the plan represents the incremental reductions needed for expeditious attainment by 1982. Although the currently approved SIP regulations are equivalent to reasonably available control technology for traditional stationary sources, reductions in fugitive dust emissions for nontraditional sources will be necessary if the indicated reasonable further progress line is to be met. The plan states that emission reductions can result from control of fugitive dust through a dust ordinance and a road paving schedule to reduce emissions from vehicle traffic.

Due to the unavailability of precise emission factors for these fugitive dust measures, the plan cannot, at this time, quantify the expected emission reductions. The State should provide this information in future annual reports based on findings concerning the local effectiveness of the fugitive dust control tactics. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of additional fugitive dust measures, the provisions of section 172(a) would be satisfied.

The State requested an extension of 18 months for submittal of a plan for attainment of the secondary standard. This request appears consistent with the provisions of 40 CFR 51.31, since the SIP shows that attainment of the secondary standard will require emission reductions greater than those that would result from the application of all reasonably available control technology.

3. *Level of Control.* The plan uses a proportional or "rollback" model to determine emission reductions required to attain the primary standard. This approach appears to be acceptable as the inventory indicates that nontraditional sources are the primary cause of emissions in the area. If further analysis reveals that emissions are not relatively evenly distributed throughout the small planning area, more sophisticated dispersion modeling may be useful to assist in defining the necessary level of control.

4. *Legally Adopted Measures/ Schedules.* The SIP regulations (approved portions of Article 4—Visible Emissions, and Article 7—Particulate Matter) applicable to industrial particulate sources within the nonattainment area are determined to be equivalent to reasonably available control technology.

The plan indicates that emission reductions can result from control of fugitive dust through a dust ordinance and a road paving schedule to reduce emissions from vehicle traffic. Upon EPA's receipt of a commitment to schedules for the study, adoption, and implementation of needed fugitive dust measures, the provisions of section 172(b)(2), 172(b)(8), and 172(b)(10), would be satisfied.

5. *Emission Reduction Estimates.* The plan does not include quantified emission reduction estimates for fugitive dust control measures due to the unavailability of area-specific data on these measures. The State should commit to provide this information in future annual reports on findings concerning the local effectiveness of fugitive dust control tactics.

6. *Reasonable Further Progress.* The provision of reasonable further progress in the plan appears to be consistent with the intent of section 172(b)(3) and section 171(l), since it represents regular incremental reductions needed for expeditious attainment, with present application of reasonably available control technology and commitments to reduce fugitive dust emissions. The annual report is expected to update the provision for reasonable further progress based upon further evaluations of the emission inventory and the effectiveness of the control measures.

7. *Emissions Growth.* The provisions of section 172(b)(5) appear to be satisfied by the plan's assertion that no major new or modified stationary sources are anticipated for the area. The plan may be modified to provide for such growth if this condition should change.

8. *Annual Reporting.* The plan does not contain a commitment from the State to submit annual reports regarding reasonable further progress and completion of scheduled plan elements. Upon EPA's receipt of such a commitment from the State, the requirements of section 172(b)(4) would be satisfied.

9. *Permit Program.* Section 172(b)(6) requires a preconstruction review permit program for major new or modified sources conforming to the requirements of Section 173. This requirement would be satisfied if the State submits such preconstruction review regulations meeting these Part D provisions.

10. *Resources.* The plan does not contain an identification and a commitment of financial and manpower resources necessary for the plan's implementation. The State has informed EPA that such a commitment is forthcoming. Upon receipt of this essential commitment, the requirement of section 172(b)(7) would be met.

11. *Public and Government Involvement.* The plan provides evidence of public, local government, and State involvement and consultation in the planning process. In addition, the plan identifies air quality, health, welfare, economic, energy, and social effects of the plan provisions. In order to satisfy the requirements of section 172(b)(9) concerning consultation, participation, and impacts analysis, the State must also submit a summary of the public comments.

12. *Public Hearing.* The plan conforms to section 172(b)(1) and 40 CFR 51.4, since it includes evidence that the SIP revision was adopted by the State after reasonable notice and public hearing.

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the above described revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library and at the locations listed in the Addressees Section of this notice.

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

(Section 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410, 7429, 7501 to 7508, and 7601(a)).)

Dated: March 16, 1979.

Sheila M. Prindiville,
Acting Regional Administrator.

[FRL 1096-5]

[FR Doc. 79-11097 Filed 4-9-79; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Florida Steel Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a Federal Delayed Compliance Order (DCO) to Florida Steel Corporation located in Tampa, Florida. The DCO requires Florida Steel Corporation to bring air emissions from its Electric Arc Furnace Nos. 1, 3, and 4 into compliance with Hillsborough County Environmental Protection Act and Florida air pollution control regulations contained in the federally approved Florida State Implementation Plan (SIP). Because Florida Steel Corporation is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by June 30, 1979. If issued by EPA, the federal DCO would prevent suits under the federal enforcement and citizen suit provision(s) of the Clean Air Act for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on this proposed DCO.

DATES: Written comments must be received on or before May 10, 1979. All requests for a public hearing must be received on or before April 25, 1979 and should be accompanied by a statement as to why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after at least twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308. Material supporting the Delayed Compliance

Order and public comments received in response to this notice may be inspectd and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Aronson, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30308, Telephone Number (404) 881–4253.

SUPPLEMENTARY INFORMATION: Florida Steel Corporation operates Electrc Arc Furnace (EAF) Nos. 1, 3, and 4 at Tampa, Florida. On December 23, 1977, pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), the U.S. Environmental Protection Agency issued a Notice of Violation to Florida Steel Corporation of the finding that Electric Arc Furnace Nos. 1, 3, and 4 were operating in violation of the Hillsborough County Environmental Protection Act, Chapter 67–1504, as amended, Section 18 Rules of the Hillsborough County Environmental Protection Act, Chapter 1–3.03 II Process Weight Table and Chapter 1–3.03 III Fugitive Particulate. In addition, EAF Nos. 1, 3, and 4 were found to be in violation of the Rules of the State of Florida Department of Pollution Control, Chapter 17–2 Air Pollution, Subsection 17–2.04 Prohibitive Acts, Part (2) Particulate Matter and Part (3) Fugitive Particulate, dealing with the control of fugitive and particulate emissions from process sources. These regulations limit the emission of particulate matter from the EAFs, and are part of the federally approved Florida State Implementation Plan. The Order requires final compliance with the regulations by June 30, 1979, and the source has consented to its terms. The source has agreed to meet the Delayed Compliance Order's increments during the period of this informal rulemaking.

The proposed Delayed Compliance Order satisfies the applicable requirements of Section 113(d) of the Act. If the Federal Delayed Compliance Order is issued, compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against this source for violations of the state air pollution control regulation[s] covered by the Order during the period the Delayed Compliance Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would also be barred. In the event of an emergency air pollution episode, the source would have to comply with all of the provisions of Section 303 of the Act. Comments received by the date specified above will be considered in determining whether EPA should issue the Delayed Compliance Order. Testimony given at any public hearing concerning the Delayed Compliance Order will also be considered. After the public comment period, and after EPA has reviewed any comment received in response to this notice, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: March 22, 1979.

John C. White,
Regional Administrator, Region IV.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.141 to reflect approval of the following Order:

2. The text of the order reads as follows:

United States Environmental Protection Agency

[Docket No. DCO–78–31]

In the matter of Florida Steel Corporation, Tampa, Florida, proceeding under § 113(d) Clean Air Act, as amended; Delayed Compliance Order.

This Delayed Compliance Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7413(d) (hereinafter referred to as the "Act"). This Delayed Compliance Order contains a schedule for compliance and reporting requirements. Public notice, opportunity for a public hearing, and thirty days notice to the State of Florida have been provided pursuant to Section 113(d)(1) of the Act.

Findings

On December 23, 1977, Mr. Paul J. Traina, Director, Enforcement Division, Region IV, United States Environmental Protection Agancy (EPA), pursuant to authority delegated to him by the Regional Administrator, issued a Notice to the Florida Steel Corporation, (hereinafter referred to as FSC). The Notice informed the FSC that Electric Arc Furnace (EAF) Nos. 1, 3 and 4 were found to be in violation of the Hillsborough County Environmental Protection Act, Chapter 67–1504, as amended, Section 18 Rules of the Hillsborough County Environmental Protection Act, Chapter 1–3.03 II Process Weight Table and Chapter 1–3.03 III Fugitive Particulate (Chapters 1–3.03 II and III). In addition, EAF Nos. 1, 3 and 4, were found to be in violation of the Rules of the State of Florida Department of Polluton Control, Chapter 17–2 Air Pollution, Subsection 17–2.04 Prohibitive Acts, Part (2) Particulate Matter and Part (3) Fugitive Particulate (Sections 17–2.04(2) and (3)), dealing with the control of fugitive and particulate emissions from process sources. Said violations have continued beyond the 30th day after receipt of the Director's notification to FSC.

After a thorough investigation and analysis of all relevant facts, including the fact that FSC is unable to comply immediately and that installation of control equipment if necessary to facilitate compliance with the applicable Hillsborough County and State of Florida air pollution regulations, EPA has determined that compliance in accordance with the schedule hereinafter set forth is reasonable and as expeditious as practicable.

Ordered

I

Abatement Program

The attached Appendices governing an abatement program are incorporated into and made a part of this Delayed Compliance Order for the control of particulate emissions at the Florida Steel Corporation facility located in Tampa, Florida.

The Appendices are designated as follows:

Appendix A: Electric Arc Furnace No. 1,

Appendix B: Electric Arc Furnace Nos. 3 and 4,

Appendix C: Continuous Monitoring Plan.

II

Report—Addressees

All submissions of source performance test results, reports and other items required by this Delayed Compliance Order shall be made to the Director, Enforcement Division, United States Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30308 (hereinafter referred to as the "Director"), with copies to the Secretary, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Twin Towers Office Building, Tallahassee, Florida 32301 (hereinafter referred to as the "Secretary"), and the Director, Hillsborough County Environmental Protection Commission, 1900 Ninth Avenue, Tampa, Florida 33605, (hereinafter referred to as the "Local Director").

III

Progress Reports—Milestone Certification

The FSC shall submit, no later than five (5) days after the end of each quarter, commencing with the January 1 to March 31, 1979, quarter, a progress report for the emission points specified in Part I. These reports shall contain specific information on the progress toward each milestone in Part I. If any delay is anticipated in meeting said milestones, FSC shall immediately notify the Director in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay shall not excuse the delay. In addition, FSC shall submit, no later than five (5) days after the deadline for completing each milestone required by Part I, certification to the Director, Secretary and Local Director whether such milestone has been met.

IV

Notification of Tests

The FSC shall provide the Director, Secretary, and Local Director, with twenty

(20) days notice prior to the conducting of any performance tests required by Part I in order to afford an opportunity to evaluate the test procedure and to have an observer present at such testing.

V

Malfunctions and Breakdowns

The FSC shall perform operation and maintenance practices on all sources as necessary to prevent malfunctions or breakdowns and to reduce emissions in excess of regulations to the maximum extent practicable. When emissions due to sudden and unforeseen malfunction or breakdown of the affected facility exceed those which occur during the normal operation of the electric arc furnaces for greater than four (4) hours, the owner or operator shall notify this office and the appropriate state or local air pollution control agency by telephone or telegram as promptly as possible, and in no event later than twelve (12) hours following the start of such malfunction or breakdown, and shall cause written notice to be sent to the Director, the Secretary, and the Local Director, no later than the end of the next working day following the start of such malfunction or breakdown. Such notices shall specify the name of the affected facility, its location, the address and telephone number of the person responsible for the affected facility, the nature and cause of the malfunction or breakdown, the date and time when such malfunction or breakdown was first observed, the expected duration, and an estimate of the physical and chemical composition, rate, and concentration of the emission. The FSC shall remedy the malfunction or breakdown as soon as possible thereafter and shall take reasonable steps to reduce emissions during the malfunction or breakdown.

The Regional Administrator shall have the authority during a malfunction or breakdown to require FSC to take specific steps to reduce emissions, including process equipment modifications and/or reductions, or termination if necessary. Within ten (10) days after the termination of a malfunction or breakdown requiring the above notification, the owner shall submit a report detailing:

(1) The time the excess emission began and ended;

(2) The time of the beginning and end of the malfunction or breakdown which is asserted to be the cause of the excess emission;

(3) An estimate of the physical and chemical composition, rate, and concentration of emissions which occurred;

(4) An explanation and, where appropriate, an engineering analysis of the cause of the malfunction or breakdown;

(5) A description of those operating and/or maintenance procedures and practices in use prior to and during the occurrence, which were designed to prevent or minimize the extent and duration of the malfunction or breakdown;

(6) Any other steps taken to minimize the extent or duration of the malfunction or breakdown;

(7) An analysis of what steps will be taken to prevent or minimize similar occurrences in the future; and

(8) Such additional information as the Regional Administrator may require.

This provision does not exempt FSC from enforcement action as specified in Part X, if the interim emission requirements are violated during a malfunction or breakdown.

VI

Interim Requirements

A. For the period during which this Delayed Compliance Order is in effect, FSC shall at all times comply with the following interim emission requirements for Electric Arc Furnace Nos. 1, 3 and 4 which represent the best practicable system of emission reduction:

1. Maintain and operate the present pollution control equipment until such time as additional equipment is installed.

2. Visible emissions from the baghouses shall not exceed 20% opacity as determined by 40 CFR Part 60 (EPA Method 9).

e. EAF No. 1 will operate only when either (or both) EAF No. 3 or EAF No. 4 is down for reline, maintenance, or other operational reasons.

4. At no time shall there be more than one EAF operating in the charging and tapping modes.

If, at any time during the effective period of this Delayed Compliance Order, the applicable interim emission requirement is violated, FSC shall notify EPA of the violation as soon as possible, but no later than twenty-four hours after the start of the violation.

B. In addition to the foregoing interim emission requirement, for the period during which this Delayed Compliance Order is in effect, FSC shall take all necessary steps to comply with the applicable emission limitations contained in the Florida State Implementation Plan insofar as FSC is able, and shall take all necessary precautions to ensure that its emissions will not cause or contribute to a violation or violations of National Ambient Air Quality Standards.

C. Furthermore, FSC shall comply with any emergency requirements specified by EPA pursuant to Section 303 of the Clean Air Act, 42 U.S.C. § 7603, to prevent an imminent and substantial endangerment to human health.

VII

Continuous Monitoring

The FSC shall, as part of the control strategy and pursuant to Section 114(a) of the Act, install, calibrate, operate and maintain the continuous monitoring devices as proposed in the attachment to FSC's letter dated November 29, 1978, (appended hereto as Appendix C), which (1) continuously measure and permanently record the volumetric flow rate through each separately directed canopy and hood for Electric Arc Furnace Nos. 1, 3 and 4, and (2) continuously measure the pressure drop across the bags for each compartment of the baghouses.

The continuous monitoring devices for the baghouses and Electric Arc Furnace Nos. 1, 3 and 4 shall be installed, operated and calibrated no later than June 30, 1979. The continuous monitor strip charts shall be maintained by FSC and be subject to EPA review when requested. In the event that FSC elects to cease the operations of Electric Arc Furnace No. 1, as outlined in Appendix A, then FSC will not be required to install, calibrate, operate, and maintain said continuous monitoring devices for Electric Arc Furnace No. 1.

VIII

Compliance Responsibility

Nothing herein shall affect the responsibility of the source to comply with all other applicable Federal, State or local regulations.

IX

Order Termination

This Delayed Compliance Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines on the record after notice and hearing, that an inability to comply with Chapters 1–3.03 II and III, and Sections 17–2.04(2) and (3) no longer exists.

X

Violation of Requirements

Violation of any requirement of this Delayed Compliance Order shall result in one or more of the following actions:

(a) enforcement of such requirement through the commencement of a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 113(b) of the Act, or a criminal prosecution pursuant to Section 113(c) of the Act, or both;

(b) revocation of this Delayed Compliance Order, after notice and opportunity for a public hearing, and subsequent enforcement of Chapters 1–3.03 II and III, and Sections 17–2.04(2) and (3) in accordance with Sections 113(b) and/or (c) of the Act.

XI

Noncompliance Penalty

Failure by FSC to achieve and certify compliance by June 30, 1979, and maintain compliance thereafter, shall result in one or more of the actions identified in Part X(a). In addition, noncompliance beyond August 7, 1979, shall subject FSC to an administratively assessed noncompliance penalty pursuant to the requirements of Section 120 of the Act and any rules and regulations promulgated pursuant thereto, unless FSC is exempted by Section 120(a)(2)(B) or (C) of the Act.

In the event of noncompliance after August 7, 1979, FSC will be formally notified of its noncompliance pursuant to Section 120(b)(3) of the Act.

XII

Waiver of Rights

By consenting to the terms and conditions of this Delayed Compliance Order FSC waives any and all rights it may have to seek a stay of enforcement of this Delayed Compliance Order in connection with any judicial review of the Florida State Implementation Plan or portion thereof.

XIII

Effective Date

This Delayed Compliance Order shall have full force and effect upon promulgation in the **Federal Register.**

Dated ————————.

Douglas M. Costle.

Appendix A—United States Environmental Protection Agency Delayed Compliance Order [1]

The FSC shall complete or have completed the following acts with respect to the control of particulate emissions from Electric Arc Furnace No. 1 located in Tampa, Florida, on or before the dates specified:

A. If the FSC elects to install an emission control system to achieve compliance with the applicable particulate and fugitive emission limiting regulations, then the following schedule shall be met.

1. Completed—Complete general specfications for emission control equipment and submit to EPA a control plan that describes at a minimum the steps to be taken to achieve compliance with the applicable particulate and fugitive emission limiting regulations.

2. Completed—Initiate on-site construcion, fabrication, or installation of emission control control equipment.

3. Completed—Negotiable and sign all necessary contracts for the emission control system.

4. June 15, 1979—Complete on-site construction or installation of emission control equipment.

5. June 30, 1979—Complete performance testing and achieve final compliance with Chapters 1–3.03 II and III, and Sections 17–2.04(2) and (3) and certify such compliance to EPA.

B. If the FSC elects to cease operations of Electric Arc Furnace No. 1 in order to achieve compliance with the applicable particulate and fugitive emission limiting regulations, then the following schedule shall be met.

1. June 30, 1979—Cease all operations of Electric Arc Furnace No. 1 and achieve compliance with Chapters 1–3.03 II and III, and Section 17–2.04(2) and (3). Certify such compliance to EPA and that the furnace will no longer be operated unless approved by EPA.

Appendix B—United States Environmental Protection Agency Delayed Compliance Order [2]

The FSC shall complete or have completed the following acts with respect to the control of particulate emissions from Electric Arc Furnace No. 3 and 4 located in Tampa, Florida, on or before the dates specified:

1. Completed—Complete general specifications for emission control equipment and submit to EPA a control plan that describes at a minimum the steps to be taken to achieve compliance with the applicable particulate and fugitive emission limiting regulations.

2. Completed—Initiate on-site construction, fabrication, or installation of emission control equipment.

3. Completed—Negotiate and sign all necessary contracts for the emission control system.

4. June 15, 1979—Complete on-site construction or installation of emission control equipment.

5. June 30, 1979—Complete performance testing and achieve final compliance with Chapters 1–3.03 II and III, and Sections 17–2.04 (2) and (3) and certify such compliance to EPA.

Appendix C—Continuous Monitoring Plan

The Consent Agreement between EPA and Florida Steel Corporation requires continuous monitoring in two respects. "(1) Continuously measure and permanently record the volumetric flow rate through each separately directed hood for electric arc furnaces No. 1 and 2; and (2) Continuously measure the pressure drop across the bags for each compartment of the baghouses."

It is proposed herewith that essentially the same system which is installed at the Florida Steel Corporation's Baldwin Plant be utilized with the exception that the sensing pressure be the static pressure at the suction of the fan rather than the differential pressure created by the pitot tube. In this way the pressure tap can be maintained free of obstructions more easily than would be the case with the aforementioned pitot tube. Since the purpose of this installation is to monitor the attainment of adequate flow rate it would seem sufficient to measure the pressure referred to above since in a fixed system the flow rate through the duct work and associated hoods will be in proportion to the suction side static pressure. The relationship between this pressure and cfm flow rate could be established at the initiation of operations.

The monitoring system itself would comprise a static tap being sensed by a magnehelic type pressure gauge which is equipped internally with two set points to determine the existence of static pressure above or below each of these set points. In this way a two step measurement can be maintained of the static pressure at the fan suction. The level of static pressure above or below these set points will be recorded by means of a continuous strip chart recorder operating at a chart speed of one inch per hour. This system is essentially identical to that used in Baldwin with the exception of sensing fan suction only instead of pitot tube differential pressure.

The second requirement dealing with the measurement of pressure drop across the bags for each compartment is a standard feature of the Florida Steel Corporation baghouse installations and will be installed as previously accomplished. These are water filled U-tube manometers and as such do not require calibration or maintenance except for checking of the fluid level.

The calibration and maintenance of the flow measuring system would be somewhat simplified inasmuch as the system is basically measuring the suction pressure of the fan in terms of inches of water. The calibration of this type installation can easily be done on a quarterly basis by comparing applied pressure or suction readings versus a water tube manometer. This procedure is therefore proposed as a quality assurance measure.

Consent [3]

The Florida Steel Corporation has reviewed this Delayed Compliance Order and hereby consents to all of the findings, requirements and terms of this Delayed Compliance Order. Florida Steel Corporation believes said Compliance Order to be reasonable and agrees to meet all of the provisions thereof during the informal rulemaking process.

The Florida Steel Corporation hereby represents that it has full corporate authority and the necessary corporate approval to enter into and perform in accordance with the terms and provisions of this Delayed Compliance Order. The signatory below represents that he has the requisite corporate authority to execute this Consent on behalf of his company.

Dated January 22, 1979.

John P. Hilburn,

Florida Steel Corporation.

[Docket No. 78–31; FRL 1088–5]

[FR Doc. 79–10011 Filed 4–9–79; 8:45 am]

BILLING CODE 6560–01–M

[1] This appendix is attached to and incorporated by reference into a Delayed Compliance Order issued to the Florida Steel Corporation on ———, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

[2] This appendix is attached to and incorporated by reference into a Delayed Compliance Order issued to the Florida Steel Corporation on ————, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

[3] This Consent is attached to and incorporated by reference into a Delayed Compliance Order issued to Florida Steel Corporation on ————, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

Notices

Federal Register
Vol. 44, No. 70
Tuesday, April 10, 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

Rural Electrification Administration Intent To Prepare Environmental Impact Statement Regarding Riverbend Nuclear Power Station, Unit 1, in Louisiana

Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare an Environmental Impact Statement (EIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with possible financing assistance to Cajun Electric Power Cooperative, Inc., P.O. Box 578, New Roads, Louisiana 20760, and Sam Houston Electric Cooperative, Inc., P.O. Box 121, Livingston, Texas 77350 and Jasper-Newton Electric Cooperative, Inc., 812 South Margaret, Kirbyville, Texas 75956, or an association representing the latter two cooperatives.

This possible financing assistance would provide for ownership of a portion of the proposed 940 MW (net) Riverbend Nuclear Power Station Unit 1, and associated facilities located in West Feliciana Parish, Louisiana. Presently, Gulf States Utilities Company is the sole owner.

Interested persons are invited to submit comments which may be helpful in preparing the Draft Environmental Impact Statement. Comments should be forwarded to the Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with copies to each of the cooperatives whose mailing addresses are given above. Additional information may be obtained at the offices of Cajun Electric Power Cooperative, Inc., Highway 1, New Roads, Louisiana, telephone (504) 638–6326 or Sam Houston Electric Cooperative, Highway 190 East, Livingston, Texas 77351, telephone (713) 327–5711, or Jasper-Newton Electric Cooperative, at their address given above, telephone (713) 423–2241.

Any financing assistance which REA may provide in connection with Riverbend Nuclear Power Station will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects, and final action will be taken only after compliance with Section 102(2)(C) of the National Environmental Policy Act of 1969 and other environmentally related statutes, regulations, Executive Orders, and Secretary's Memoranda.

Dated at Washington, D.C., this 3rd day of April, 1979.

Robert W. Feragen,
Administrator, Rural Electrification Administration.
[FR Doc. 79–10961 Filed 4–9–79; 8:45 am]
BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

Denver-Alaska Service Investigation; Hearing

Through inadvertence a notice assigning the hearing room in the above-entitled proceeding was omitted. It shall be held on April 10, 1979, Hearing Room C, at 9:30 a.m. (local time), Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned judge.

Dated at Washington, D.C., April 5, 1979.

John J. Mathias,
Administrative Law Judge.
[Docket 28366]
[FR Doc. 79–11096 Filed 4–9–79; 8:45 am]
BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Cancellation of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: Notice is hereby given that the scheduled Council meeting on April 12–13, 1979, of the Pacific Fishery Management Council as published in the **Federal Register**, Vol. 44, No. 51, page 15522, Wednesday, March 14, 1979, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, telephone: (503) 221–6352.

Dated: April 5, 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.
[FR Doc. 79–10963 Filed 4–9–79; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Levels Under New Bilateral Agreement with the Socialist Federal Republic of Yugoslavia

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for men's and boys' wool and man-made fiber suits in Categories 443 and 643, produced or manufactured in Yugoslavia, and exported to the United States during the twelve-month period which began on January 1, 1979 and extends through December 31, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), and March 22, 1979 (44 FR 17545)).

SUMMARY: On October 26 and 27, 1978, the Governments of the United States and the Socialist Federal Republic of Yugoslavia exchanged notes establishing a new bilateral textile agreement for the period beginning on January 1, 1978 and extending through December 31, 1980. The agreement establishes levels of restraint for Categories 443 and 643 during the twelve-month period which began on January 1, 1979. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to limit imports for consumption, or withdrawals from warehouse for consumption, of wool and man-made fiber textile products in Categories 443 and 643 to the designated amounts. The levels of restraint have not been

adjusted to account for imports during the period which began on January 1, 1979 and extends through the effective date of this action. Imports during this period will be charged to the new levels.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: May 1, 1979.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5423).

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 5, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the bilateral textile agreement of October 26 and 27, 1978, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 1, 1979 and for the twelve-month period which began on January 1, 1979 and extends through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption, of wool and man-made fiber textile products, exported from Yugoslavia in the following categories, in excess of the indicated twelve-month levels of restraint:

Category	Twelve-Month Level of Restraint [1]
443/643....	13,462 dozen of which not more than 7,777 dozen shall be in Category 443

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979

In carrying out this directive entries of wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Yugoslavia, which have been exported to the United States prior to January 1, 1979 and entered on and after the effective date of this directive, shall not be charged against the levels of restraint established in this directive.

Wool and man-made fiber textile products in the foregoing categories that have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 26 and 27, 1978, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, which provide, in part, that: (1) within the group limit the specific limit may be exceeded by not more than five percent in any agreement period; and (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), and March 22, 1979 (44 FR 17545)).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Federal Republic of Yugoslavia and with respect to imports of wool and man-made fiber textile products from Yugoslavia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79–11068 Filed 4–9–79; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF DEFENSE

Department of the Army

Permit Application for a Proposed Dredge and Fill Operation by U.S. Marine, Inc., for a Commercial Shipbuilding and Ship Repair Facility for Construction and Repair of Commercial Watercraft; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* The applicant proposes to dredge and fill (to an elevation +7.0 feet msl) approximately 4.2 acres along the western side of Bayou La Batre, a tributary of Portersville Bay, Mississippi Sound, Alabama. Approximately three acres of the area to be filled are tidally influenced wetlands adjacent to navigable water with the remaining 1.2 acres having an elevation of +4.6 feet msl. About one acre below mean high water within Bayou La Batre is to be dredged to a maximum of a minus 12-foot elevation. The construction involves a boatslip for commercial purposes and five sets of marineways. The proposed activity will involve between 19,500 and 24,500 cubic yards of material. The proposed activity for this permit application is the initial action of an overall development plan for the 700 acre holdings of U.S. Marine, Inc. and International Oceanic Enterprises on the west side of Bayou La Batre. Industrial development is proposed on approximately 50 percent of these holdings. Approximately 50 percent of the proposed industrial site contains wetlands. Other land uses of the overall development plan include wetland preservation, residential, recreational and transportation.

2. *Alternatives:* Reasonable alternatives to the proposed action include development at alternate sites, development in some degree other than proposed, and no action (permit denial). Additional alternatives may be identified during the scoping process.

3. *Scoping Process:* Public involvement to date on the permit application has involved circulation of a Public Notice (Number AL78–00116–M) on 15 May 1978. The scoping process, as outlined by the Council on Environmental Quality in the 29 November 1978, **Federal Register** National Environmental Policy Act-Regulations, will be utilized to involve Federal, State and local agencies and other interested persons. Identification of significant issues to be addressed in the EIS will be determined through the scoping process.

4. *Scoping Meeting:* The time, date, and location of the scoping meeting has not yet been finalized.

5. *DEIS Preparation:* It is estimated that the DEIS will be available to the public in the fall of 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. James B. Hildreth, PD–EE, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Ala. 36628.

Dated: March 26, 1979.

Charlie L. Blalock,

Colonel, CE, District Engineer.

[FR Doc. 79–10948 Filed 4–9–79; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Realignment of Defense Contract Administration Services Management Areas (DCASMAs); Environment Assessment

The Defense Logistics Agency (DLA) has announced that as part of its continuing effort to reduce operating costs and improve efficiency, the Agency has completed detailed economic studies and has decided to realign the field structure of the Defense Contract Administration Services (DCAS) mission.

The DLA provides responsive contract administration services within the Continental United States and overseas, as directed, to the Military Departments and other DoD components, Federal civil agencies and to foreign governments and others, when authorized. This assignment was made to DLA in 1965 to achieve certain of the primary objectives for improving the Defense Procurement Program, including the elimination of duplicate effort among the various DoD contract administration services activities and presentation of one face to industry in the field administration of contracts. Contract administration services within DLA are carried out through nine regional commands designated as Defense Contract Administration Services Regions (DCASRs), and their subsidiary activities designated as Defense Contract Administration Services Management Areas (DCASMAs) and Defense Contract Administration Plant Representative Offices (DCASPROs). Among the more significant functions performed are: contract administration, production, quality assurance, industrial security, and contractor payment.

DLA estimates that closing 10 DCASMAs should result in a net annual savings of approximately $2.394 million, consisting primarily of the costs associated with the reduction of five military and 80 civilian positions, as well as other related savings.

The DCASMAs which would be closed are located in Oxnard and Pasadena, California; Fort Wayne and South Bend, Indiana; Independence, Missouri; Buffalo and Johnson City, New York; Cincinnati, Ohio; Oklahoma City, Oklahoma; and Salt Lake City, Utah.

Consistent with the intent of Section 102(2)(c) of the National Environmental Policy Act of 1969; the Department of Defense Directive "Environmental Considerations in Department of Defense Actions" (32 CFR Part 214), notice is hereby given that an Environmental Impact Statement is not being prepared for these actions. An Environmental Assessment has been completed, from which it has been determined that the actions will have no appreciable impact on the environment. Therefore, the actions are not considered to be major actions significantly affecting the quality of the human environment.

The Environmental Assessment, as well as the basic data developed during the economic analysis study, may be reviewed in interested parties in the Office of Rear Admiral E. M. Kocher, SC, USN, Assistant Director, Plans, Programs and Systems, Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22314. A limited number of copies of the Environmental Assessment are available from the same office to fill single copy requests.

To ensure that no substantive information has been overlooked, DLA invites public comment concerning the decisions and the Environmental Assessment discussed above. Interested persons are invited to submit written data, views, and arguments to Rear Admiral E. M. Kocher within 30 days of publication of this notice.

April 4, 1979.

H. E. Lofdahl, *Director,*

Correspondence and Directives, Washington Headquarters Services Department of Defense.

[FR Doc. 79-10965 Filed 4-9-79; 8:45 am]

BILLING CODE 3620-01-M

Realignment of Defense Contract Administration Services Regions (DCASR's); Environmental Assessment

The Defense Logistics Agency (DLA) has announced that as part of its continuing effort to reduce operating costs and improve efficiency, the Agency has completed detailed economic studies and has decided to realign the field structure of the Defense Contract Administration Services (DCAS) mission.

The DLA provides responsive contract administration services within the Continental United States and overseas, as directed, to the Military Departments and other DOD components, Federal civil agencies and to foreign governments and others, when authorized. This assignment was made to DLA in 1965 to achieve certain of the primary objectives for improving the Defense Procurement Program, including the elimination of duplicate effort amount the various DoD contract administration services activities and presentation of one face to industry in the field administration of contracts. Contracts administration services within DLA are carried out through regional commands designated as Defense Contract Administration Services Regions (DCASRs), and their subsidiary activities designated as Defense Contract Administration Services Management Areas (DCASMAs) and Defense Contract Administration Plant Representative Offices (DCASPROs). Among the more significant functions performed are: contract administration, production, quality assurance, industrial security, and contractor payment.

DLA estimates that closing four DCASRs should result in a net annual savings of approximately $14.236 million, consisting primarily of the costs associated with the reduction of 23 military and 590 civilian positions, as well as other related savings. The DCASRs which would be closed are located in New York, New York; Cleveland, Ohio; Philadelphia, Pennsylvania; and Dallas, Texas.

Consistent with the intent of Section 102(2)(c) of the National Environmental Policy Act of 1969; the Department of Defense directive "Environmental Considerations in Department of Defense Actions" (32 CFR 214), notice is hereby given that an Environmental Impact Statement is not being prepared for these actions. An Environmental Assessment has been completed, from which it has been determined that the actions will have no appreciable impact on the environment. Therefore, the actions are not considered to be major actions significantly affecting the quality of the human environment.

The Environmental Assessment, as well as the basic data developed during the economic analysis study, may be reviewed by interested parties in the office of Rear Admiral E. M. Kocher, SC, USN, Assistant Director, Plans, Programs and Systems, Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22314. A limited number of copies of the Environmental Assessment are available from the same office to fill single copy requests.

To ensure that no substantive information has been overlooked, DLA invites public comment concerning the decisions and the Environmental Assessment discussed above. Interested persons are invited to submit written data, views, and arguments to Rear

Admiral E. M. Kocher within 30 days of publication of this notice.

Dated: April 4, 1979.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.
[FR Doc. 79-10986 Filed 4-9-79; 8:45 am]
BILLING CODE 3620-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence School Panel Of National Defense University and The Defense Intelligence School

Pursuant to the provisions of Sub-Section (d) Section 10 of Pub. L. 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a partially closed meeting of the Defense Intelligence School Panel of the Board of Visitors of the National Defense University and the Defense Intelligence School will be held on-site at the School in Washington, D.C. on 15, 16 and 17 May 1979.

Morning sessions on 15, 16 and 17 May 1979 will be devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and will therefore be closed to the public. Subject matter will be concerned with specialized instructional requirements and related curricula content.

H. E. Lofdahl,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.
April 5, 1979.
[FR Doc. 79-11016 Filed 4-9-79; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Strategic Petroleum Reserve Billion Barrel Reserve (DOE/EIS-0034); Availability of Final Supplement to the Environmental Impact Statement

Notice is hereby given that a final Supplement to the Final Environmental Impact Statement (EIS), DOE/EIS-0034, Strategic Petroleum Reserve (January 1979) was issued and filed with the Environmental Protection Agency on April 5, 1979, pursuant to the Department of Energy's (DOE) implementation of the National Environmental Policy Act of 1969. The supplement was prepared to support administrative action related to the DOE proposed expansion of the Strategic Petroleum Reserve to store one billion barrels of oil. The final EIS was issued by the Federal Energy Administration (FEA) as FES 76-2 in December 1976. The draft supplement was issued by FEA in September 1977. The responsibilities and functions of the FEA were assumed by DOE as of October 1, 1977.

This supplement assessed the potential programmatic environmental impacts of increasing the amount of oil stored from 500 million barrels to one billion barrels.

Copies of the final supplement are available for public inspection at the DOE Reading Room located at Room GA-152, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. Copies of the final supplement have been furnished to those who commented on the draft supplement as well as to other agencies and individuals who have requested copies.

Copies are also available for public inspection at Federal Depository Libraries. A limited number of single copies are available for distribution by contacting the Chief, Environmental Branch, Management Division, Strategic Petroleum Reserve Office, 1726 M Street, N.W., Washington, D.C. 20461, or Technical Information Center, P.O. Box 62, Oak Ridge, Tennessee 34762. The supplement is also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Washington, D.C. this 5th day of April 1979.

For the Department of Energy.

Ruth C. Clusen,
Assistant Secretary for Environment.
[FR Doc. 79-10978 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement Concerning Peaceful Uses of Atomic Energy; United States and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the United States of America and the European Atomic Energy Community (ERATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves the following retransfer:

RTD/JA(EU)-17, retransfer from France to Japan, 304g Uranium, containing 198g U-235, 503g Natural Uranium, and 78g Plutonium, in the form of samples and pins. This material will be used for various post irradiation analyses and measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the retransfer of this nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.
Dated: April 2, 1979.

Harold D. Bengelsdorf,
Director for Nuclear Affairs International Programs.
[FR Doc. 79-10974 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement Involving Shipment of Plutonium-240 to Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves the shipment of 0.5 g of Plutonium-240 to the Power Nuclear Corporation, Tokai-Mura, Japan. The material will be used as a part of a densitometer to provide rapid, accurate assays of total plutonium content in reprocessed solutions, using gamma-ray analysis techniques, to provide Internatinal Atomic Energy Agency inspectors with a means to bypass time-consuming methods of chemical analysis in the verification process. This material will be furnished under Contract No. WC-JA-12.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice

For the Department of Energy.
Dated: April 4, 1979.

Harold D. Bengelsdorf,
Director for Nuclear Affairs International Programs.
[FR Doc. 79-10975 Filed 4-9-79; 8:45 am]
BILLING CODE 650-01-M

Proposed Subsequent Arrangement Concerning Peaceful Uses of Atomic Energy; United States and Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada and under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves the (1) sale of 2.069 kgs Uranium, and the replacement of 3.069 kgs of Uranium returned for reprocessing, a total of 5.138 kgs of Uranium, enriched to 93.15%, under Contract No. S–CA–269. The material will be shipped to France for fabrication into fuel elements for the McMaster University Nuclear Reactor, Hamilton, Ontario, Canada, and the fuel elements will then be shipped to Canada. The U.S. Nuclear Regulatory Commission's export license for the foregoing material (XSNM 01339, issued February 26, 1979) listed the intermediate destination in France as well as the ultimate recipient in Canada. Since the entire transaction has been reviewed, and since the shipments are expected to be completed within one year following issuance of the export license, this notice authorizes shipment to the intermediate consignee and, thereafter, to the final destination. See Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242) 43 FR 25326 *et seq.* (June; 9, 1978); (2) the shipment of 10g of depleted uranium-238, to the Institute for Transuranium Elements, Karlsruhe, West Germany, Contract No. WC–EU–116, to be used for spectroscopy studies in furtherance of DOE programmatic interests.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 2, 1979.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Programs.

[FR Doc. 79-10976 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Grants Program for Weatherization Assistance for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Notice of Availability of Environmental Assessment and Negative Determination.

SUMMARY: The Department of Energy (DOE) announces the availability of its environmental assessment (EA) of a Grants Program for Weatherization Assistance for Low-Income Persons. DOE has determined, based on the EA, that this program does not consititute a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321 *et. seq.*). Therefore, a negative determination pursuant to 10 CFR 208.4(c) is hereby issued to notify the public that an environmental impact statement is not required for this action. Comments regarding the EA and DOE's determination that an environmental impact statement is not required are invited.

DATE: Written comments to be submitted no later than 4:30 p.m., April 20, 1979.

ADDRESS: Comments should be submitted to Ms. Margaret Sibley, Office of Conservation and Solar Applications, Mail Stop 2221–C, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Ronald Bedrick, Department of Energy, Office of Weatherization Assistance, State and Local Programs, Room 4121, 20 Massachusetts Avenue NW., Washington, D.C. 20545, (202) 376–9481.

Donald Silawsky, Office of Environment, Room 6234, 20 Massachusetts Avenue NW., Washington, D.C. 20545, (202) 376–4062.

Verlette Gatlin, Department of Energy, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room GA–152, Washington, D.C. 20585, (202) 252–5969.

John Bell, Department of Energy, Office of General Counsel, 6G–087, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6947.

SUPPLEMENTAL INFORMATION:

I. Background

In Title II, Part 2 of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206, Congress amended the original legislation for Weatherization Assistance for Low-Income Persons, Title IV, Part A of the Energy Conservation and Production Act (ECPA), Pub. L. 94–385, 42 U.S.C. 6326.

ECPA authorized DOE to make grants to States for the purpose of weatherizing the homes of low-income persons, especially the elderly and handicapped.

The primary energy conservation measures under ECPA included insulation, caulking, weatherstripping, and storm windows and doors. An environmental assessment (EA) was prepared in connection with the weatherization program regulations implementing ECPA, which were published in the **Federal Register** on June 1, 1977 (42 FR 27899). Notice of the EA, its availability, and the negative determination made in connection with it was published in the **Federal Register** on March 31, 1977 (42 FR 17168).

The proposed amendments to the program regulations, required by NECPA, were published in the **Federal Register** on February 16, 1979 (44 FR 10348). These amendments, when finalized, will result in several changes to the weatherization program.

The changes involve an increase in the income eligibility criterion from 100 percent to 125 percent of the Office of Management and Budget Poverty Guidelines and redefinitions of the terms "weatherization materials" and "repair materials." In addition, the administrative budget will be evenly divided between the grantee and subgrantee and the maximum expenditure per dwelling unit will be increased from $400 (for materials) to $800 (for materials and related program costs).

Technical standards are also required by NECPA. The proposed amendments to the program regulations proposing such standards will soon be published in the **Federal Register.**

In accordance with its obligation under NEPA, DOE stated in the February 16 proposal that it had undertaken an EA of the impact of the NECPA amendments and would complete this EA and any additional required NEPA review prior to promulgation of the final rule. That EA has now been completed.

The analyses in the EA indicate that the only probable adverse environmental impacts which can not be avoided as a result of the NECPA

amendments consist of some near-term increases in air and water pollutants as a result of increased production of weatherization materials. However, these increases are short-lived, relatively insignificant, and offset by pollutant reductions from fuel savings.

Based on its evaluation of the EA, DOE has determined that the proposed action would not be a "major federal action significantly affecting and quality of the human environment," within the meaning of NEPA and that no environmental impact statement is therefore required.

II. Comment Procedure

Single copies of the grants program EA may be obtained from Mr. Ronald Bedrick at the address listed above. Copies of the EA are also available for public review in the DOE Freedom of Information Reading Room, listed above, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Interested parties may submit written comments with respect to the EA and the negative determination to Ms. Margaret Sibley at the address given above. Any person submitting written comments should forward 5 copies, if possible, to DOE. All comments should be identified on the outside of the envelope and on the documents themselves with the designation "Grants Program for Weatherization Assistance for Low-Income Persons." All comments should be received by DOE by 4:30 p.m. April 20, 1979, in order to ensure consideration.

All comments submitted are subject to DOE's regulations at 10 CFR 1004 (44 FR 1908, January 8, 1979) governing freedom of information requests. Procedures in 10 CFR 1004.11 are applicable when a person submitting a comment believes that information or data contained in the comment is confidential. These procedures require the individual to submit one copy of a written statement that identifies that confidential material. Material that is not accompanied by a statement of confidentiality will be considered to be non-confidential. In all cases, DOE reserves the right to determine the confidential status of the information or data and to treat it accordingly.

Issued in Washington, D.C., April 4, 1979.

Omi Walden,

Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-10973 Filed 4-5-79; 3:58 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Fuel Oil Marketing Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Fuels Oil Marketing Advisory Committee will meet Monday, April 23, and Tuesday, April 24, 1979, in the King Room of the Parker House Hotel, 60 School Street, Boston, Massachusetts.

The Committee was established to provide the Secretary of Energy with expert and technical advice concerning the marketing of fuel oil as it relates to the development and implementation of policies and programs by the Department of Energy.

The Committee has been working on a draft report concerning low-income energy assistance. Due to the immediacy of the difficulties facing low-income individuals and the need for prompt action to finalize the document and submit it to the Administration by the end of April, less than the normal 15-day notice is being given for the meetings.

The agenda for the meetings is as follows:

Monday, April 23, 1979

King Room—9:00 a.m. to 5:00 p.m.
Agenda: Finalizing Low-Income Energy Assistance Report

Tuesday, April 24, 1979

King Room—9:00 a.m. to 5:00 p.m.
Agenda: Residential Energy Conservation Program, 1979-1980 Supply and Pricing Outlook, Summer—fill Program, Schriver Report on Heating Oil Market Profile

The meetings are open to the public. The Chairman of the Committee is empowered to conduct the meetings in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statments pertaining to the agenda should inform Georgia Hildreth, Director, Advisory Committee Managment Office, (202) 252-5187, at least 5 days prior to the meetings and reasonable provision will be made to include their presentation on the agenda.

Minutes of the meetings will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. An Executive Summary of the meetings may be obtained by calling the Advisory Committee Managment Office at the number above.

Issued at Washington, D.C. on April 6, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-11355 Filed 4-9-79; 11:46 am]

BILLING CODE 6450-01-M

Stanco Petroleum, Inc.; Issuance of Proposed Remedial Order

Notice is hereby given that on April 4, 1979, the Proposed Remedial Order (PRO) summarized below was issued by the Central Enforcement District of the Economic Regulatory Administration (ERA) of the Department of Energy to Stanco Petroleum, Inc. (Stanco), 217 East Third Street, Kimball, Nebraska 69145.

The PRO includes findings that Stanco, a crude oil producer, overcharged $1,109,198.30 in sales of crude oil during the period September 1973 through July 1976. The overcharges occurred with respect to four crude oil properties located in Kimball County, in the State of Nebraska. Specifically, the Office of Enforcement of the ERA has found that Stanco overcharged $958,492.04 in sales of crude oil produced from the Enders Field Unit property; $17,980.57 in sales of crude oil produced from the L. V. Frederick property; $49,159.06 in sales of crude oil produced from the P. C. Hyson property; and $83,566.63 in sales of crude oil produced from the Spath Oil Field property.

The reason for the overcharges was Stanco's erroneous characterization of each of said properties as a stripper well lease, as defined at 6 CFR 150.54(s) during the period November 16, 1973, through January 14, 1974; at 10 CFR 210.32 during the period January 15, 1974 through January 31, 1976; and 10 CFR 212.74(c)(1) during the period February 1, 1976 through July 31, 1976. The specific periods during which the violations occurred with respect to each property are set forth in the PRO.

The Office of Enforcement of the ERA has proposed in the PRO that Stanco be required to refund the full amount of overcharges (plus interest) found with respect to each property as the Department of Energy shall direct. Refunds shall be made over a period of time which is equal to the number of months during which overcharges have been found with respect to each property. In addition, the Office of

Enforcement of the ERA has proposed in the PRO that Stanco be required to submit to the Office of enforcement of the ERA, with respect to the Enders Field Unit property, certain data and calculations necessary for the Office of Enforcement of the ERA to determine whether the violations continued after July 1976.

A copy of the PRO, with any confidential information deleted, may be obtained from the ERA at the following address:

Manager, Programs Branch, Central Enforcement District, Economic Regulatory Administration, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

Any aggrieved person may, on or before April 25, 1979, file a Notice of Objection with the Office of Hearings and Appeals in accordance with 10 CFR 205.193. Pursuant to 10 CFR 205.193, a Notice of Objection must be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the PRO as a final Remedial Order, and shall state the person's intention to file a Statement of Objections pursuant to 10 CFR 205.196. No confidential information shall be included in a Notice of Objection. A Notice of Objection must be filed at the following address:

Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461.

In addition, a copy of each filing must be submitted to the ERA Central Enforcement District office at the address set forth herein, and to:

Assistant General Counsel for Administrative Litigation, Office of General Counsel, Department of Energy, Room 7149, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Issued this 4th day of April, 1979 in Washington, D.C.

Barton Isenberg,

Assistant Administrator of Enforcement, Economic Regulatory Administration.

[FR Doc. 79-10977 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Allied Chemical Corp.; Petition for Special Relief

April 3, 1979.

Take notice that on March 8, 1979, Allied Chemical Corporation (Allied Chemical), One Riverway, P.O. Box 2120, Houston, Texas 77001, filed a petition for special relief in Docket No. RI79-29 pursuant to the provisions of 18 CFR 1.7 and 2.76, Sections 104(b)(2) and 502(c) of the Natural Gas Policy Act of 1978 (NGPA), and Section 271.402(c) of the Interim Regulations implementing the NGPA.

Allied Chemical owns 72 leases in the Lake Arthur Field, Jefferson Davis Parish, Louisiana. The petition states that most of the gas produced is sold in interstate commerce to Transcontinental Gas Pipe Line Corporation and Texas Gas Transmission Corporation at the rates set in Opinion Nos. 749-C and 770-A.

According to the petition, Allied Chemical has been sued [1] by a group of royalty, land, and mineral owners who seek increased royalty payments computed on the basis of the current market value to the gas rather than the contract sale price, as is presently done. Allied Chemical avers that if the plaintiffs are successful, Allied Chemical may have to pay increased royalties or face cancellation of the leases. Accordingly, Allied Chemcial requests rate adjustments to the extent that any increased royalty payments resulting from the suit exceed the present royalty payments based on the contract sales price.

Any person desiring to be heard or to make any protest with reference to this petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before April 25, 1979. All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be come 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. RI 79-29]

[FR Doc. 79-10952 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Cities Service Gas Co.; Proposed Changes in FERC Gas Tariff

April 4, 1979.

Take notice that Cities Service Gas Company (Cities Service) on March 22, 1979, tendered for filing Second Revised Third Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1. Cities Service states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective April 23, 1979, to reflect:

(1) An increase in the Cumulative Rate Adjustment due to increases in Cities Service's natural gas supplier rates, including increased rates attributable to the Natural Gas Policy Act of 1978 (NGPA);

(2) An increased Surcharge Adjustment to amortize the Deferred Purchased Gas Cost Account balance;

(3) A negative Advance Payment Rate Adjustment of 0.72¢ per Mcf.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP72-142 and RP76-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 or 1.10 of the Commission's rules of practice and procedure (18 C.F.R. 1.8 or 1.10). All such petitions or protests should be filed on or before April 17, 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 Nos. RP72-142; RP76-135; RP78-76]

[FR Doc. 10953 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1979.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 28, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, as follows:

Second Substitute Forty-ninth Revised Sheet No. 16.

Second Substitute Twenty-third Revised Sheet No. 64A.

Columbia states that the foregoing tariff sheets effective March 1, 1979, are being filed to reflect revised rates resulting from the Commission's March

[1] *Krielow, et al.* v. *Allied Chemical Corporation*, Docket No. 78-1422, is currently pending in the United States District Court for the Western District of Louisiana.

13, 1979, Order No. 23 in Docket No. RM79–22.

Copies of the filing were served upon the Company's 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, Union Center Plaza Building, 825 North Capitol Street, NE., 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. RP 73–65 (PGA 79–1) (AP 79–1)]

[FR Doc. 79–10954 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

Commonwealth Edison Co.; Order Accepting for Filing and Suspending Proposed Rate Increase, Denying Motion To Reject, Ordering Refiling, Establishing Hearing and Price Squeeze Procedures, and Granting Intervention

Issued March 30, 1979.

On January 30, 1979, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its FERC Electric Service Tariff, Rate 78, designed to implement a general rate increase for full requirements and partial requirements customers.[1] The proposed changes would increase revenues from jurisdictional sales by approximately $5,500,000 based on a test year ending September 30, 1979, an increase of approximately 24.15% over the rates presently in effect. Commonwealth proposes a change in the monthly demand charge from $3.00/kW to $6.12/kW in each summer month and $5.31/kW in all other months. Summer months are defined as the first billing month with a regular meter reading date after June 15, and the three succeeding billing months. The proposed new rate specifies a time-of-day surcharge to the energy charge of 4.08 mill per kWh applicable to all kWh purchased during peak periods and a 4.14 mill per kWh credit to the energy charge applicable to off-peak purchases. The peak period is defined as 9:00 a.m. to 10:00 p.m., Monday through Friday excluding specified holidays. Off-peak periods are all other hours.

Commonwealth proposes an effective date for the revised rate of March 31, 1979. Notice of the filing was issued February 12, 1979, with all protests and petitions to intervene due by February 23, 1979.

Petitions to Intervene and Motions to Reject or Suspend Rates

The Village of Winnetka, Illinois (Winnetka) filed a petition to intervene on February 22, 1979. Winnetka asserts that its rates for partial requirements purchases will increase by approximately $506,438 for the twelve month period following the proposed effective date.

On March 2, 1979, the Cities of Batavia, Geneva, Naperville, St. Charles and Rock Falls, Illinois (Cities) filed a petition to intervene in the proceeding, a motion to reject the filing and, alternatively, a motion for a five month suspension.[2]

In this petition Cities essentially give four reasons why the Commonwealth filing should be rejected. First, they contend that the magnitude of the proposed increase is inconsistent with national wage-price guidelines. Second, Cities note that Commonwealth has annualized its Period II data to reflect all salary and wage increases anticipated during 1979, causing them to pay higher rates in advance of the increase in this cost of service. Third, they contend that the cost support for the rate design modifications proposed by Commonwealth has not been adequately explained, and that any departure from cost supported rates has not been justified. Fourth, Cities request the rejection of that portion of the rate increase based on Commonwealth's use of comprehensive interperiod tax allocation, citing the remand of Commission Order No. 530–B in *Public Systems, et al.* v. *FERC*, Nos. 76–1609 and 76–1830 (D.C. Cir., February 16, 1979).

In support of their alternative request for a five-month suspension, Cities allege that the proposed rate would create an anticompetitive price squeeze in relation to Commonwealth's retail industrial Rate No. 6L. Cities object to Commonwealth's allocation of demand costs on the basis of average coincident peaks in the four summer months June through September, rather than on the basis of the average coincident peaks over twelve consecutive months. Finally, Cities note that Commonwealth's proposed changes in rate design will cause them to redesign their retail rates.

On March 2, 1979 the City of Rochelle, Illinois (Rochelle) filed a petition to intervene and a motion that Commonwealth's revised rate schedule be suspended for five months. Rochelle supports the motion by the Cities for a full five month suspension of Commwealth's revised rate schedule. Further, it contends that as a partial requirements customer it will be adversely affected by time-of-day pricing features of the revised rate schedule that do not affect full requirements customers. Rochelle generally objects to the treatment of partial requirements and total requirements customers as an homogenous class, asserting that there are fundamental differences between the two. Finally, Rochelle protests the elimination of an energy discount for consumption in excess of 100,000 kWh per month.

On March 19, 1979, Commonwealth filed an answer to the petitions of the Cities. Despite the answer's untimeliness we shall nevertheless consider it. Commonwealth asserts that the material in its filing adequately explains the design of the new rate. The new rate is alleged to have a form like that found in Commonwealth's current retail Rate No. 6L applicable to large industrial customers. Commonwealth goes on to say that its rate is in compliance with the national wage-price guidelines. Commonwealth also states that there is no basis for a suspension of the newly filed rates, contending that its current rate of return is inadequate and that Cities were informed of the design and level of the proposed rate in advance of filing.

Conclusions

We shall deny Cities motion to reject the proposed filing. However, we note that Commonwealth's cost of service study offered in support of its filing includes an annualization of wage and salary increases in Period II. This type of adjustment is contrary to the Commission's policy against such

[1] The customers are the Cities of Batavia, Geneva, Naperville, Rock Falls and St. Charles, Illinois, for full requirements service and the City of Rochelle, Illinois, and the Village of Winnetka, Illinois, for partial requirements service.

[2] On February 21, 1979, the City of Rochelle, Illinois, joined the Cities of Batavia, Geneva, Naperville, St. Charles and Rock Falls, Illinois, in a motion for an extension of the deadline for filing protests and petitions to intervene until March 2, 1979. The motion states good cause for an extension and will be granted. On March 23, 1979 Winnetka filed a protest and a motion for a five month suspension of the proposed rate accompanied by a motion for an extension of the filing deadline. The issues raised by Winnetka can be dealt with in the hearings held pursuant to this order.

adjustments for Period II data. *See, Detroit Edison Company*, Docket No. ER79–70, order issued March 13, 1979. Summary disposition of this particular issue is appropriate. Therefore, we shall require Commonwealth to refile its cost of service and proposed rates so as to eliminate any annualizing adjustments for wage and salary increases in Period II.

Cities contend that Commission Order No. 530–B has been "invalidated" by the United States Court of Appeals for the District of Columbia. This is not the case, as the Commission said in its recent order in *Detroit Edison Company*. Docket No. ER79–70 (March 9, 1979);

> The Court's decision in *Public Systems* has yet to become final. Pending possible reconsideration or review, we think it the better course to preserve the Commission's position by adhering to our present policies. We note that the court did not hold that the Commission's conclusions in Order No. 530–B were impermissible. Rather, the matter was remanded by the court on the ground that the Commission had not adequately explained and supported its decision.
>
> Whether the court's decision is the subject of further litigation or Commission proceedings on remand are initiated, we shall separately consider the need for interim procedures. Our present view is that it will be more efficient and practical to consider such procedures on a generic rather than on a case-by-case basis, although the proceedures, themselves, could provide for case-by-case consideration of the question.[3]

However, our denial of Cities' motion to reject Commonwealth's filing is without prejudice to Cities' right to raise the interperiod tax allocation issue subsequently.

Our review of Commonwealth's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, urreasonable, unduly discriminatory or otherwise unlawful. Therefore, we shall accept the proposed rates for filing and suspend those rates for five months, to become effective, subject to refund, on September 1, 1979.

We note with interest that the proposed rates are designed on a time-of-day and seasonal basis. The Commission has encouraged the use of innovative rate design as a way of more closely matching rates to costs and thereby minimizing misallocation of resources as well as reducing waste, inequity and discrimiantion.[4] We therefore direct the presiding administrative law judge to insure that the parties fully address the issues raised related to the cost support for the time-of-day and seasonal rate design.

The Commission orders:

(A) The motion of the Cities of Batavia, Geneva, Naperville, Rock Falls and St. Charles, Illinois to reject Commonwealth Edison Company's filing is hereby denied.

(B) Commonwealth Edison Company's proposed rates are hereby accepted for filing and suspended for five months, to become effective September 1, 1979, subject to refund.

(C) The motion of the Cities of Rochelle, Geneva, Naperville, St. Charles and Rock Falls, Illinois, for an extension of the time for filing protests and petitions to intervene is hereby granted.

(D) The Cities of Batavia, Geneva, Naperville, Rock Falls, St. Charles and Rochelle, Illinois and the Village of Winnetka, Illinois, are hereby permitted to intervene in this proceeding subject to the Rules and Regulatios of the Commission: *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(E) Commonwealth Edison Company's annualizing adjustments for wage and salary increases in its Period II data are hereby rejected. Within sixty (60) days from the issuance of this order, Commonwealth Edison Company shall refile its cost of service and its rates to reflect elimination of the annualizing adjustments to wage and salary increases in the Period II data.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the Regualtions under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by Commonwealth Edison Company.

(G) The Staff shall serve top sheets in this proceeding on or before June 28, 1979.

(H) Pursuant to Section 2.17 of the Commission's Regulations, we hereby order initiation of price squeeze procedures.

(I) A Presiding Administrative Law Judge to be designated by the Chief Adminsitrative Law Judge for that purpose shall convene a conference in this proceeding to be held within ten (10) days of the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The designated Law Judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure. In accordance with Section 2.17 of the Commission's Regulations, the Presiding Administrative Law Judge shall convene a prehearing conference within fifteen (15) days of the issuance of this order for the purpose of hearing intervenors' requests for data required to present their case, including a *prima facie* showing, on price squeeze issues.

(J) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79–182]
[FR Doc. 79–10955 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

[3] The Commission filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* of *Public Systems* on March 16, 1979.

[4] Order No. 537, Docket No. RM74–20, "Order Amending Regulations Under the Federal Power Act" issued October 9, 1975, mimeo at p. 4.

Michigan Wisconsin Pipe Line Co.; Application

April 3, 1979.

Take notice that on March 19, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79–223 and application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing July 13, 1979, and operation of facilities to enable it to take into its certificated main pipeline system natural gas which would be purchased or received from procedures or other similar sellers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the

account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $18,000,000; that no single offshore project would exceed a cost of $3,500,000; and that the cost of any single onshore project would not exceed $2,250,000. Applicant states that since such amounts are in excess of the amounts as set forth in subparagraphs (1)(i) and (1)(ii) of § 157.7(b) of the Commission's Regulations, it requests waiver of the provisions of such subparagraphs. Applicant states that these costs would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 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 rugulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[Docket No. CP79-223]

[FR Doc. 79-10956 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Texas Gas Transmission Corp.; Petition to Amend

April 3, 1979.

Take notice that on March 19, 1979, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. G-10395, a petition to amend the order of August 30, 1956, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the reduction in the maximum daily volumes of natural gas which Texas Gas is obligated to transport and deliver for the account of Michigan Wisconsin Pipe Line Compay (Mich Wisc), all as more fully set forth in the petition to amend, which is on file with the Commission and open the public inspection.[1]

It is stated that Texas Gas and Mich Wisc have entered into a gas transportation agreement dated January 31, 1979, which supersedes the April 18, 1956, agreement between the parties. Texas Gas states that the new agreement reduces the maximum daily volumes which Mich Wisc may cause to be delivered to Texas Gas at the existing points of receipt. Texas Gas further states that this reduction was agreed upon by the parties based on Mich Wisc's estimate as to its maximum deliverability potential at the points of receipt and also based upon Texas Gas' receipt capability.

Texas Gas indicates that the reduced maximum daily volumes by point of receipt are as follows:

Field and maximum daily volume

Welsh, 1,000 Mcf.
South Elton, 1,000 Mcf.
North Elton, 1,000 Mcf.
Iowa, 10,000 Mcf.

The volumes delivered to Texas Gas for transportation need not be purchased by Mich Wisc from a specific producer as under the prior agreement, but may be purchased from any producer-supplier which has the capability of causing volumes to be delivered to Texas Gas for the account of Mich Wisc at the four existing points of receipt, it is stated.

Texas Gas states that pursuant to the new agreement, it would transport on an interruptible basis, the volumes of natural gas it receives at the points of receipt and deliver such volumes less gas retained for compressor fuel and line loss to Mich Wisc at the various interconnections of the facilities of Texas Gas and Mich Wisc located near Eunice, Acadia Parish, Louisiana.

[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.

Texas Gas would charge Mich Wisc 5.26 cents per Mcf. of natural gas delivered.

It is stated that the proposed reduction in the maximum daily volumes would allow Mich Wisc to receive volumes of natural gas into its system without having to construct additional facilities and thus result in an overall cost savings.

Any person desiring to be heard or to make any protest with reference to said petition should on or before April 25, 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. G-10395]

[FR Doc. 79-10957 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Transcontinental Gas Pipe Line Corp.; Application

April 3, 1979.

Take notice that on March 20, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP79-229 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate facilities and to transport for Florida Gas Transmission Company (Florida) up to 10,000 dt per day equivalent of natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco states that it would transport for Florida on a best efforts basis an aggregate quantity of natural gas of up to 10,000 dt per day, or such greater or lesser daily quantity as Transco may agree to receive from time to time depending upon its own operations and capacity requirements. The natural gas would be purchased by Florida from its affiliate, Florida Gas Exploration Company, and certain working interest partners, from various wells in the

Bassfield Field area, Jefferson Davis County, Mississippi, it is asserted.

Transco would receive the gas by means of a proposed tap valve assembly and meter and regulator station to be constructed and operated by Transco in or near Section 22, in Jefferson Davis County, Mississippi, where gathering facilities of Florida would interconnect with Transco's system, it is said. Transco would deliver thermally equivalent quantities to Florida at two existing interconnections between the respective systems, located in St. Helena Parish and in Vermilion Parish, Louisiana, it is further stated.

For this transportation service, Florida would pay Transco initially 3.5 cents per dt delivered, it is asserted.

Transco states that Florida would reimburse it for the actual cost of Transco's receiving facilities, estimated at $19,355 and would construct and operate its gathering facilities pursuant to budget-type authorization in Docket No. CP78–326.

The volumes of gas available to Florida in the Bassfield Field area, which can reach Florida's system by means of the said transportation service, would help maintain as adequate and reliable a service as possible in Florida's marketing areas.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,
Secretary.

[Docket No. CP79–229]
[FR Doc. 79–10958 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

Trunkline Gas Co.; Change in Tariff

April 4, 1979.

Take notice that Trunkline Gas Company (Trunkline) on March 23, 1979, tendered for filing Twenty-Eighth Revised Sheet No. 3–A to its FERC Gas Tariff, Original Volume No. 1. An effective date of May 1, 1979 is proposed.

Trunkline states that this filing is being made as a result of the Commission's Order No. 23 issued March 13, 1979 in Docket No. RM79–22; such order reflecting the Commission's current position on the applicability of NGPA prices. This filing reflects only Section 104 NGPA prices to be paid retroactively to December 1, 1978, with such increased costs to be recovered by a surcharge over the four month period May 1, 1979 to September 1, 1979.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 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. RP73–35]
[FR Doc. 79–10959 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

United Gas Pipe Line Co.; Application

April 3, 1979.

Take notice that on March 20, 1979, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79–231 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing June 1, 1979, and operation of facilities to enable it to take into its certificated main pipeline system natural gas which would be purchased or received from producers or other similar sellers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment United's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with United.

United states that the total cost of the proposed facilities would not exceed $20,000,000; that the cost of any single onshore project would not exceed $2,500,000; and that the total cost of any single offshore project would not exceed $4,000,000. United indicates that currently effective cost limitations imposed by the Commission Regulations have not kept pace with the increase in pipeline construction costs due to inflation, and, accordingly, United requests a waiver of the aforementioned cost limitations prescribed by § 157.7(b)(1).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[Docket No. CP-79-231]

[FR Doc. 79-10960 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Arizona Fuels Corp.; Filing of Petition for Review

April 3, 1979.

Take notice that Arizona Fuels Corp. on March 14, 1979, filed a Petition for Review under 42 U.S.C. 719(b) (1977 Supp.) from an order of the Secretary of Energy.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before April 18, 1979 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8,). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement, Department of Energy, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[Docket No. RA 79-22]

[FR Doc. 79-11074 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Arkansas Power and Light Co.; Proposed Changes in FERC Rates Schedules

April 5, 1979.

Take notice that on April 3, 1979, Arkansas Power & Light Company (Company) tendered for filing proposed changes in the Agreement for Electric Service with the Arkansas Electric Cooperative Corporation (AECC).

The Company states that the changes in the Agreement for Electric Service include an increase in capacity at fourteen points of delivery and a decrease in capacity at two points of delivery. The Company states that due to a difficulty in making accurate estimates on the billing effects of these changes, no billing data was filed. The Company states that there will be no changes in rates or provisions in the Agreement other than those noted above.

A copy of the filing has been mailed to AECC, according to the Company.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 30, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[Docket No. ER79-281]

[FR Doc. 79-11090 Filed 4-9-79; 8:45 am]

BILLING CODE 6450-01-M

Arkansas Louisiana Gas Co. et al.; Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets, and Rejecting Certain Other Tariff Sheets Which Reflect Louisiana First Use Tax in Pipeline Rates

Arkansas Louisiana Gas Company, Docket Nos. RP 79-53 and RP 79-54; Columbia Gas Transmission Corporation, Docket No. RP79-42; Consolidated Gas Supply Corporation, Docket No. RP79-47; El Paso Natural Gas Company, Docket No. RP79-37; Florida Gas Transmission Company, Docket No. RP79-35; Michigan Wisconsin Pipe Line Company, Docket No. RP79-43; Mid Louisiana Gas Company, Docket No. RP79-32; Natural Gas Pipeline Company of America, Docket No. RP79-38; Northern Natural Gas Company, Docket No. RP79-41; Panhandle Eastern Pipe Line Company, Docket No. RP79-34; Sea Robin Pipeline Company, Docket No. RP79-45; Southern Natural Gas Company, Docket No. RP79-48; Tennessee Gas Pipeline, Docket No. RP79-52; Texas Eastern Transmission Corporation, Docket No. RP79-40; Texas Gas Transmission Corporation, Docket No. RP79-31; Trunkline Gas Company, Docket No. RP79-33; Transcontinental Gas Pipe Line Corporation, Docket No. RP79-46; United Gas Pipe Line Company, Docket No. RP79-44.

March 30, 1979.

In Order Nos. 10, 10-A, and 10-B,[1] the Commission amended section 154.38 of its Regulations promulgated pursuant to the Natural Gas Act, by adding a new paragraph (18 C.F.R. § 154.38(h)). Paragraph (h), as amended, establishes procedures governing pipeline recovery of the State of Louisiana First Use Tax on Natural Gas.[2] Under paragraph (h) pipelines are permitted to collect the First Use Tax, subject to refund, pursuant to a temporary tracking mechanism similar to a purchased gas adjustment clause.

Pursuant to Order Nos. 10, 10-A, and 10-B the eighteen pipeline companies listed in Appendix A filed tariff sheets to establish provisions for tracking and deferred accounting of the First Use Tax. In addition, each company filed a rate increase in the commodity component of its rate schedules to recover the estimated cost of the First Use Tax from April 1, 1979, to the date of its next Purchase Gas Adjustment

[1] State of Louisiana First Use Tax in Pipeline Rate Cases, Docket No. RM78-23, 43 FR 45553 (October 3, 1978); 43 FR 60438 (December 28, 1978); 44 FR 13460 (March 12, 1979).

[2] 1978 La. Sess. Law Serv. 482 (Act No. 294), to be codified as La. Rev. Stat. §§ 47:1301-47:1307. Hereinafter referred to as "First Use Tax."

filing. In accordance with Order No. 10–B, all the companies listed in Appendix A, except for Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), request an effective date of April 1, 1979. In Order No. 10–B, Michigan Wisconsin was allowed to file for an effective date of May 1, 1979, with recovery of 13 months of tax payments over the succeeding twelve month period. Order No. 10–B allowed pipelines the option of either choosing an escrow account procedure or, under certain conditions, a corporate undertaking procedure. All eighteen pipelines have chosen the corporate undertaking procedure.

Public notice has been issued for the filings of the eighteen pipeline companies listed in Appendix A. Petitions to intervene have been filed by the parties listed in Appendix B. The Commission finds that these petitioners have demonstrated an interest in this proceeding warranting their participation, and the petitions shall therefore be granted.

A. Refund Provisions

In allowing the pipelines to collect the First Use Tax from pipeline customers, the Commission established procedures to assure full refunds with interest to pipeline customers upon a final court determination that the First Use Tax was unconstitutional. In Order No. 10–A, the Commission required the pipelines to deposit all funds collected into an escrow account until a final court determination of the validity of the First Use Tax. In Order No. 10–B, the Commission, acting in response to comments and petitions for rehearing,[3] amended paragraph (h) to allow pipelines the option of choosing either the escrow account procedure established in Order No. 10–A or, under certain conditions, a corporate undertaking procedure. In establishing the corporate undertaking procedure the Commission had no intention of abrogating its duty to protect the pipeline customers' funds. The Commission established the following condition precedent for establishment of the corporate undertaking:

> * * * the pipeline will collect the funds subject to refund. A pipeline voluntarily agrees to refund, within 60 days of the issuance of a final and non-appealable court order, those payments made on that portion of the First Use Tax found to be invalid, together with corresponding interest at the refund interest rate under Louisiana law, but not less than 6% per annum. A pipeline voluntarily makes this agreement recognizing that it will not be released from this obligation even if the State of Louisiana does not refund the tax payments plus interest to the pipeline.[4]

All of the pipelines have filed corporate undertakings in which the pipelines *have agreed* to comply with the terms and conditions of paragraph (h), which includes the above-mentioned refund provisions. All of the pipelines also have filed Resolutions of their Board of Directors which authorize the corporate undertakings.

The Resolution of the Board of Directors of Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), however, states:

> * * * which agreement and undertaking is expressly conditioned by the attached letter of March 9, 1979 transmitting said agreement and undertaking to said Commission.

In its March 9, 1979 transmittal letter, Michigan Wisconsin states:

> Michigan Wisconsin agrees that if it is relieved from any obligation to pay the Louisiana First Use Tax to the State, it will refund to its customers, all refunds of such tax, and interest thereon, which it receives from the State.[5]

Michigan Wisconsin apparently is unwilling to comply with the refund provisions of the corporate undertaking.

Furthermore, although all of the other pipelines have submitted undertakings confirming their voluntary agreement to make full refunds with interest, because of statements made in the transmittal letters of several pipelines, the Commission is concerned that some pipelines may have filed the corporate undertaking under the mistaken belief that they could accept the corporate undertaking without accepting the agreement regarding refunds.

When the Commission adopted the corporate undertaking procedure, with its refund provisions, the Commission balanced the interests of the public and the pipelines. The pipelines gave a guarantee that, within 60 days of the issuance of a final and non-appealable court order, they would refund those payments made on that portion of the First Use Tax found to be invalid, together with corresponding interest at the refund interest rate under Louisiana law, but not less than 6% per annum. In giving this guarantee, the pipelines incur losses only if Louisiana does not make full refund plus interest. These potential losses are losses which most pipelines have assured the Commission will not occur.[6] On the other hand, the pipeline customers' amount of interest refunded was not set at 9% interest, the present interest rate on refunds,[7] nor at any higher interest rate which might be adopted by the Commission,[8] but at the statutory interest refund rate under Louisiana law, which is presently 6%. The pipeline customer has made a real and measurable sacrifice in exchange for the guarantee for full refund plus interest.

By requiring pipelines who selected the corporate undertaking procedure to agree to make all refunds plus interest, the Commission was allowing the corporate undertaking under the same conditions as existed in *City of Cleveland* v. *FPC.*[9] In City of Cleveland, there was a dispute between the City, which purchased electric power, and Cleveland Electric Illuminating Co. (CEI), a private utility which sold the power to the City, as to whether the state would refund a state gross receipts tax if the tax were found *not* to be applicable to the sale of power by CEI to the City. However, CEI voluntarily guaranteed that it would refund the tax to the City whether or not it received refunds from the state in the event the tax was found not to be applicable to the sale of power by CEI to the City. The Court stated that in light of this voluntary commitment by CEI there was no reason not to permit CEI to collect the tax from the City, subject to refund, pending a determination as to whether the tax was applicable to the sale of power by CEI to the City.

It is clear from Order No. 10–B that the corporate undertaking provision is only available to those pipelines which enter into a voluntary, unconditional commitment, like the commitment given by CEI in the *City of Cleveland* case to refund that portion of the First Use Tax found to be invalid by final and non-appealable court order whether or not the pipeline receives a refund of the amounts from the State of Louisiana. In discussing the corporate undertaking option in Order No. 10–B, the Commission specifically referred to the *City of Cleveland* case.[10] In addition the language of the regulations speaks of the "voluntary" agreement of the pipeline to make refunds even if such refunds are not received from the State of Louisiana.[11] In other words, a pipeline

[3] See Order No. 10–B, at 4–8, mimeo.

[4] Section 154.38 (h)(5)(i), Order No. 10–B, at 22–23.

[5] Michigan Wisconsin Pipe Line Company, Transmittal Letter March 9, 1979 at 3.

[6] See Order No. 10–B, at 4–6. For example, Michigan Wisconsin stated: "Michigan Wisconsin and its Louisiana counsel have studied the Louisiana statutes, * * * and believe that the State of Louisiana has an absolute obligation to refund all amounts of tax collected, if the tax is held invalid."

[7] See 18 CFR 154.67(c).

[8] See Rate of Interest on Amounts Held Subject to Refund, Docket No. RM77–22, Notice of Proposed Rulemaking issued March 9, 1979.

[9] 525 F. 2d 845, 850 n. 37 (D.C. Cir. 1976).

[10] Order No. 10–B, mimeo pp. 7–8 and footnote 15, p. 8.

[11] Section 154.38(h)(5)(i), Order No. 10–B at 22–23.

selecting the corporate undertaking procedure, voluntarily agrees to make refunds even if it has not received, and does not anticipate receiving, a refund from the State of Louisiana.

Michigan Wisconsin has not made this voluntary agreement, and is, therefore, not in compliance with the Commission's regulations. The Commission therefore rejects Michigan Wisconsin's filing. Michigan Wisconsin can either refile a corporate undertaking which conforms with the Commission's regulations or file under the escrow account procedures.

Those pipelines which filed the corporate undertaking in the belief that their transmittal letter could release them from the corporate undertaking and from their agreement to make full refund with interest have misinterpreted Order No. 10–B.[12] Under Order No. 10–B, pipelines may select a *corporate undertaking package*—which includes the unconditional refund provision—or the escrow account procedure. Voluntary acceptance of the refund provision was a condition precedent, a stipulation, to use of the corporate undertaking. Statements by the pipeline that they reserve all rights to contest the legality of the refund provision (which they voluntarily agreed to) constitute non-acceptance of the corporate undertaking package. Any such language in the transmittal letters submitted by the various pipelines is hereby rejected.

Although a pipeline may have misinterpreted the corporate undertaking option, the Commission does not seek to thwart a pipeline's right to court review of the refund provisions to Order Nos. 10, 10–A, and 10–B. Therefore, those pipelines which desire to reserve their right to challenge the refund provisions of Order Nos. 10, 10–A, and 10–B should file within 15 days under the escrow account procedures. Absent such a refiling, those pipelines which have such reservation language in their transmittal letters shall be deemed to have made a voluntary, unconditional commitment to make refunds of that portion of the First Use Tax found to be invalid by final and non-appealable court order whether or not the refunds are received from the State of Louisiana. This commitment shall be deemed to be identical to that given by CEI in the *City of Cleveland* case discussed previously in this order.

Tennessee Gas Pipeline Company (Tennessee) has conditioned any refund to the amount found after hearing to be unjustified,[13] and has included a provision allowing for a surcharge if a Commission refund order is reversed.[14] Under Paragraph (h) of the Commission's regulations refunds occur in either of two circumstances.

First, if a final and non-appealable court order finds the First Use Tax invalid, all pipelines will automatically refund those payments made on that portion of the First Use Tax found to be invalid together with corresponding interest at the refund interest rate under Louisiana law, but not less than 6% per annum. Since this refund provision is mandated by Order No. 10–B, no hearing will be involved, and no Commission order will be subject to reversal except for Order Nos. 10, 10–A, and 10–B. The legality of these Orders is likely to be determined long before a final and non-appealable court determination of the validity of the First Use Tax. Tennessee's provisions for a hearing and a surcharge are unnecessary and are contrary to the automatic refund provisions of Order Nos. 10, 10–A, and 10–B.

In the second circumstance, funds collected may be subject to refund if a pipeline does not comply with the provisions of paragraph (h) of Section 154.38. For example in paragraph (h), a pipeline is required to undertake the procedures set out in La. Rev. Stat. § 47:1576. A pipeline is also required to take all legal action necessary to enforce contract provisions which could require the other contracting party to pay the First Use Tax. If and when these issues arise, the Commission will determine the procedures to be followed, including the need for a hearing. If a final Commission order requires a refund because of non-compliance with paragraph (h), Tennessee will be allowed the normal appeal procedures: Application for rehearing, request to stay the order pending court review, and court review. These procedures adequately protect Tennesee's rights. For all of the above reasons, Tennessee's filed tariff sheets are accepted conditioned upon Tennessee's filing within 15 days revised tariff sheets reflecting elimination of the hearing provision and the surcharge provision.

Columbia requests clarification of the refund provisions dealing with the obligations of secondary pipelines who would receive refunds from their pipeline suppliers who are paying the First Use Tax. Since the 60 day refund provision of paragraph (h)[15] only applies to the primary pipelines who are paying the First Use Tax, all secondary pipelines will make refunds in accordance with their supplier refund flow through provisions contained in their PGA clauses and the Commission regulations.[16]

Arkansas Louisiana Gas Company (Arkla) states that it will refund "those payments made on that portion of the tax found to be invalid *plus the corresponding proceeds.*" (emphasis added)[17] since Arkla has chosen the corporate undertaking, Arkla's tariff provisions should state more accurately the refund provisions of the corporate undertaking. Arkla should refile within 15 days a revised tariff sheet which replaces the words "plus corresponding proceeds" with the words "together with corresponding interest at the refund interest rate under Louisiana law, but not less than 6% per annum."

B. Volumes of Natural Gas Subject to the First Use Tax

The tariffs filed by the eighteen pipeline companies contained varying definitions for calculating the volumes of natural gas subject to the First Use Tax. Trunkline, Michigan Wisconsin, Transcontinental, Texas Eastern, Columbia, Panhandle, Tennessee and Natural are useing prospective estimates of the volumes subject to the First Use Tax, rather than using historical volumes adjusted for known and measurable changes. Paragraph (h) requires that in the initial adjustment the volumes subject to the First Use Tax should be estimated volumes.[18] However, paragraph (h) further requires that any tracking provision should "generally follow the PGA

[12] For example, Sea Robin Pipeline Company stated in its March 14th transmittal letter at 1: "Sea Robin expressly reserves its right to contest the provisions of Order Nos. 10, 10–A and 10–B, including without limitation, the provisions of the corporate undertaking procedures which, under specified circumstances, could require Sea Robin to refund to its customers an amount attributable to the Louisiana First Use Tax, which is greater than the amount refunded to Sea Robin by the State of Louisiana." Northern Natural Gas Company stated in its March 15th transmittal letter at 3: "It is to be expressly understood that Northern, in filing the enclosed Agreement and Undertaking, is doing so only in order to comply with the aforesaid Regulation and its filing thereof should not be construed, in any way, to prejudice Northern's right to litigate any of the issues pertinent to Northern's obligation to make the Louisiana First Use Tax payments." Columbia Gas Transmission Corporation stated in its March 15, 1979 transmittal letter at 2: "Columbia remains concerned about the refund conditions contained in these orders, and it will continue to participate in the [circuit court] appeal."

[13] See First Revised Sheet No. 213Q of FERC Gas Tariff Ninth Revised Volume No. 1.

[14] See Original Sheet No. 213R of FERC Gas Tariff Ninth Revised Volume No. 1.

[15] Section 154.38 (h) (8), Order No. 10–B at 25–26.

[16] See 18 CFR § 154.38 (d) (4) (vii).

[17] Original Sheet No. 12H of FERC Gas Tariff First Revised Volume No. 1.

[18] Section 154.38 (h)(2), Order No. 10–B at 21.

regulation."[19] Under most purchased gas adjustment clauses, volumes are determined historically, with allowances for known and measurable changes. Allowing estimated volumes would be contrary to present Commission policy. If estimates are used to determine the volumes subject to the First Use Tax, there will be no basis from which a verification of the volumes can be made. Because there are no carrying charges, pipelines could overestimate the volumes and have the use of their customers' funds until the deferred accounts were cleared in the next First Use Tax filing. The above mentioned pipelines which have not calculated their volumes in accordance with their PGA methodology to develop current adjustments shall file substitute tariff sheets within 15 days reflecting a methodology for calculating volumes subject to the First Use Tax consistent with the pipelines' PGA methodology for calculating volumes to develop current adjustments.[20]

The First Use Tax is based on a pressure base of 15.025 psia, whereas the rates of all eighteen pipelines are computed on a pressure base of 14.65 or 14.73 psia. While thirteen of the pipelines adjusted for the pressure difference, including copies of their calculations; Texas Gas, Columbia, Texas Eastern and Consolidated did not indicate in their filings whether an adjustment was made, and Natural did not make an adjustment for its pressure base. Since failure to adjust for the pressure difference would subject more volumes to the First Use Tax than actually are subject to the tax and therefore would result in overcollections by the pipelines,[21] all pipelines should calculate the volumes subject to the First Use Tax by using a pressure base of 15.025. Texas Gas, Columbia, Texas Eastern, Consolidated, and Natural shall file substitute revised tariff sheets within 15 days indicating their adjustment for pressure base, including a copy of their calculations of the adjustment.

C. Deferred Accounts—First Use Tax

Order No. 10, 10–A and 10–B require that the tracking of the First Use Tax be pursuant to a temporary tracking mechanism similar to a purchased gas adjustment clause. Arkansas Louisiana Gas Company, El Paso Natural Gas Company, Texas Eastern Transmission Corporation, Transcontinental Gas Pipeline Corporation, Consolidated Gas Supply Corporation, Southern Natural Gas Company, and Tennessee Gas Pipeline filed First Use Tax clauses with deferred account definitions substantially different from their PGA deferred accounts. Some definitions did not state with sufficient particularity how or when the balances in the deferred account would be computed. Several definitions allow the pipelines to estimate the balance in the deferred account when calculating the First Use Tax surcharge. The Commission has generally required that the calculations for PGA surcharges be based on actual balances in the deferred account. The seven pipelines listed above shall file substitute revised tariff sheets within 15 days reflecting deferred account provisions similar to the deferred account provisions of each pipeline's PGA clause, including computation of the First Use Tax surcharge by use of actual balances.

D. Termination of Tracking Provisions

Arkansas Louisiana Gas Company[22] and Northern Natural Gas Company[23] extended the tracking of the First Use Tax beyond a final court determination and until the effective date of their first general section 4 rate filing subsequent to the date of said final and non-appealable court order. In Order No. 10–B the Commission denied Tennessee's request for continuation of the tracker after the court determination. The Commission stated:

> At the time a pipeline's tracking provision terminates pursuant to the provisions of this order, a pipeline is free to make a general section 4 rate filing if it believes that termination of the tracking provision will cause the pipeline to earn less than a just and reasonable rate of return on its jurisdictional business.[24]

Arkansas Louisiana's and Northern's filing are conditionally accepted subject to their filing substitute revised tariff sheets within 15 days reflecting tracker provisions which terminate the tracking of the First Use Tax in accordance with Order No. 10–B.

E. Miscellaneous

On March 21, 1979 Northern Natural Gas (Northern) filed Substitute Eighteenth Revised Sheet No. 4a, Third Revised Volume No. 1 of its F.E.R.C. Gas Tariff to amend its previous filing. Northern's filing is made in order to provide prompt refund of overcollections ($660,556) received from the emergency storage surcharge established pursuant to Commission orders issued April 26, 1978 and June 26, 1978 in Docket No. RP78–46. Northern states that acceptance of the revised tariff sheet "will avoid the uncertainties and administrative burdens resulting from multiple rate changes since the commencement date of the storage refund is coincident with the commencement date for tracking the Louisiana First Use Tax and the termination date of the storage refund is coincident with the effective date of Northern's annual PGA adjustment." The Commission finds good cause to accept Northern's revised tariff sheet and grants waiver of the 30 day notice requirement of its regulations.

Section 154.38(h)(2) [25] of the Commission regulations allows waiver of the filing requirements of § 154.63 and the provision of § 154.38 if a pipeline's application for tracking is accompanied by an affidavit signed by an authorized representative stating that the applicant will undertake the procedures set out in La. Rev. Stat. § 47:1576. Since all eighteen pipelines have submitted affidavits stating that the applicant will undertake the procedures set out in La. Rev. Stat. § 47:1576, the Commission grants waiver of the filing requirements of § 154.63 and the provision of § 154.38(d)(3).

Consolidated Gas Supply Corporation and United Gas Pipeline Company submitted filings on March 16, 1979, one day later than the filing requirements of Order No. 10–B. For good cause shown, the Commission grants waiver of the March 15, 1979 filing date requirement of Order No. 10–B to allow these filings.

Several pipelines submitted tariff sheets which included adjustments which are presently being reviewed in other proceedings. Pipelines shall file revised tariff sheets if the underlying rates of the proposed tariff sheets are reduced as a result of an ongoing Commission proceeding.

The Commission finds:

Good cause exists to approve, subject to the conditions hereinafter stated, the First Use Tax tariff sheets of seventeen of the eighteen pipeline companies listed in Appendix A.

The Commission orders:

(A) Subject to the conditions hereinafter stated, and subject to the refund provisions of § 154.38(h) of the Commission regulations, the First Use

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[19] *Id.*

[20] Any modification of the methodology for calculating volumes does not affect the rates filed by the pipelines in this initial adjustment because in the initial adjustment the volumes subject to the First Use Tax are determined by estimated volumes.

[21] For example, Natural's First Use Tax expense is $14,317,030 if the pressure base is unadjusted; adjusted, it would be $13,959,700.

[22] Original Sheet No. 12l, FERC Gas Tariff, First Revised Volume No. 1.

[23] Original Sheet No. 74c, FERC Gas Tariff, Third Revised Volume No. 1; Substitute Original Sheet No. 1o, FERC Gas Tariff Original Volume No. 2.

[24] Order No. 10–B at 13.

[25] Order No. 10–B at 20.

Tax tariff sheets of the pipeline companies listed in Appendix A, except for Michigan Wisconsin Pipe Line Company, are accepted effective as of April 1, 1979.

(B) Subject to the conditions hereinafter stated, the March 16, 1979 untimely filings of Consolidated Gas Supply Corporation and of United Gas Pipeline Company are accepted. The Commission grants waiver of the March 15, 1979 filing date requirement of Order No. 10–B to allow these filings.

(C) Michigan Wisconsin's tariff sheets are rejected without prejudice to Michigan Wisconsin refiling either a corporate undertaking or an escrow which conforms with the Commission's regulations.

(D) Arkansas Louisiana Gas Company and Northern Natural Gas Company shall file substitute revised tariff sheets within 15 days reflecting tracker provisions which terminate the tracking of the First Use Tax in accordance with Order No. 10–B.

(E) Texas Gas Transmission Corporation, Columbia Gas Transmission Corporation, Texas Eastern Transmission Corporation, Consolidated Gas Supply Corporation, and Natural Gas Pipeline Company of America shall file substitute revised tariff sheets within 15 days indicating their adjustment for pressure base, including a copy of their calculations of the adjustment.

(F) Arkansas Louisiana Gas Company, El Paso Natural Gas Company, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Consolidated Gas Supply Corporation, Southern Natural Gas Company, and Tennessee Gas Pipeline shall file substitute revised tariff sheets within 15 days reflecting deferred account provisions similar to the deferred account provisions of each pipeline's PGA clause, including computation of the First Use Tax surcharge by use of actual balances.

(G) Trunkline, Michigan Wisconsin, Transcontinental, Texas Eastern, Columbia, Panhandle, Tennessee and Natural shall file substitute tariff sheets within 15 days reflecting a methodology for calculating volumes consistent with the pipeline's PGA methodology to develop current adjustments.

(H) Pipeines shall file revised tariff sheets if the underlying rates of the proposed tariff sheets are reduced as a result of any ongoing Commission proceeding.

(I) Arkansas Louisiana Gas Company shall file substitute revised tariff sheets within 15 days stating more accurately the refund provisions of the corporate undertaking.

(J) The petitioners listed in Appendix B are permitted to intervene in the designated proceeding subject to the rules and regulations of the Commission; *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene. *And, provided, further,* That the admission of said intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in the designated proceeding.

(K) Northern's Substitute Eighteenth Revised Sheet No. 4a, Third Revised Volume No. 1 of its F.E.R.C. Gas Tariff is accepted and the Commission grants waiver of the 30 day notice requirement to permit an April 1, 1979, effective date.

(L) Tennessee shall file substitute revised tariff sheets within 15 days reflecting elimination of the hearing provision and the surcharge provision as discussed more fully in the body of this order.

(M) Waiver of the filing requirements of § 154.63 and the provision of § 154.38(d)(3) is granted.

(N) Those pipelines which have chosen the corporate undertaking are deemed, in accordance with Order No. 10–B, to have made a voluntary, unconditional commitment to make refunds of that portion of the First Use Tax found to be invalid by a final and non-appealable court order whether or not refunds equivalent to that portion are received from the State of Louisiana.

Those pipelines who desire to reserve their right to challenge the refund provisions of Order Nos. 10, 10–A and 10–B should file within 15 days under the escrow account procedures, all as discussed more fully in the body of this order.

By the Commission.

Kenneth F. Plumb,
Secretary.

Appendix A

Company	Volume No.	Sheet No.	Date filed	Proposed effective date
Florida Gas Transmission Co.	Orig. Vol. No. 1	Sub. 20th Rev. Sht. No. 3–A, Orig. Sht. No. 22–O, Sub. Orig. Sht. No. 22–P.	2/28/79 3/15/79	4/1/79 4/1/79
Texas Gas Transmission Corp	3rd Rev. Vol. No. 1	5th Sub. 24th Rev. Sht. No. 7, Orig. Sht. No. 108, 1st Rev. Sht. No. 109.	2/23/79 3/15/79	4/1/79 4/1/79
Mid Louisiana Gas Co	1st Rev. Vol. No. 1	1st Rev. Sht. No. 3b, Sub. Orig. Sht. Nos. 26e & 26f	2/26/79 3/14/79	4/1/79 4/1/79
Panhandle Eastern Pipe Line Co	Orig. Vol. No. 1	28th Rev. Sht. No. 3A, 5th Rev. Sht. No. 3–B, Orig. Sht. No. 43–6.	2/28/74	4/1/79
Trunkline Gas Co	Orig. Vol. No. 1	27th Rev. Sht. No. 3–A, Orig. Sht. No. 21–M, Orig. Sht. No. 21–N.	2/28/79	4/1/79
Columbia Gas Trans. Corp	Orig. Vol. No. 1	Orig. Sht. Nos. 66 and 67, Sub. 50th Rev. Sht. No. 16.	3/1/79 3/15/79	4/1/79 4/1/79
El Paso Natural Gas Co	Orig. Vol. No. 1	1st Rev. Sht. No. 68–B, Orig. Sht. Nos. 68–C and 68–D, 1st Sub. 23rd Rev. Sht. No. 3–B, 1st Sub. 13th Rev. Sht. No. 1–D.	2/28/79	4/1/79
	Orig. Vol. No. 2A	1st Sub 15th Rev. Sht. No. 1–C	2/28/79	4/1/79
	Orig. Vol. No. 1	Sub Orig. Sht. Nos. 68–E & 68–F	3/15/79	4/1/79
Texas Eastern Trans. Corp	4th Rev. Vol. No. 1	Orig. Sht. Nos. 118, 119 and 120	2/28/79	4/1/79
		Sub. 48th Rev. Sht. Nos. 14, 14A, 14B, 14C, and 14D.	3/15/79	4/1/79
Northern Natural Gas Co	3rd Rev. Vol. No. 1	1st Rev. Sht. No. 74, Orig. Sht. No. 74a, Sub. 18th Rev. Sht. No. 4a.	3/15/79 3/21/79	4/1/79 4/1/79
	Orig. Vol. No. 2	1st Rev. Sht. No. 1L, Orig. Sht. No. 1M, Orig. Sht. No. 1N.		
	3rd Rev. Vol. No. 1	Sub. Orig. Sht. No. 74b, Orig. Sht. No. 74c	3/15/79	4/1/79
	Orig. Vol. No. 1	Sub. Orig. Sht. No. 1o, and Sub. 18th Rev. Sht. No. 1c.	3/15/79	4/1/79
Natural Gas Pipeline Co. of America	3rd Rev. Vol. No. 1	36th Rev. Sht. No. 5, Orig. Sht. No. 147, Orig. Sht. No. 148.	2/28/79	4/1/79
	3rd Rev. Vol. No. 1	Sub Orig. Sht. No. 149	3/15/79	4/1/79
Sea Robin Pipeline Co	Orig. Vol. No. 1	20th Rev. Sht. No. 4, Orig. Sht. Nos. 8 and 9	3/1/79	4/1/79
	Orig. Vol. No. 1	Sub Orig. Sht. Nos. 10 and 11	3/15/79	4/1/79

Appendix A—Continued

Company	Volume No.	Sheet No.	Date filed	Proposed effective date
Transcontinental Gas Pipeline Corp	2nd Rev. Vol. No. 1	Orig. Sht. Nos. 254 & 255	3/1/79	4/1/79
	Orig. Vol. No. 2	20th Rev. Sht. No. 121	3/1/79	4/1/79
	2nd Rev. Vol. No. 1	Rev. 14th Rev. Sht. No. 12, Rev. 13th Rev. Sht. No. 15.	3/15/79	4/1/79
Michigan Wisconsin Pipe Line Co	2nd Rev. Vol. No. 1	Orig. Sht. Nos. 27E(v), 27E(vi), 27E(vii), 4th Sub. 22nd Rev. Sht. No. 27F and 3rd Sub. 23rd Rev. Sht. No. 27F.	3/15/79	5/1/79
United Gas Pipe Line Company	1st Rev. Vol. No. 1	Orig. Sht. Nos. 74-L & 74-M, 48th Rev. Sht. No. 4	3/1/79	4/1/79
		Sub Orig. Sht. Nos. 74-N & 74-O	3/15/79	4/1/79
Consolidated Gas Supply Corp	3rd Rev. Vol. No. 1	12th Rev. Sht. No. 16, Orig. Sht. Nos. 75-B and 75-C, Sub. 1st Rev. Sht. Nos. 76 and 77.	3/1/79	4/1/79
Southern Natural Gas Company	6th Rev. Vol. No. 1	34th Rev. Sht. No. 4A	3/1/79	4/1/79
Tennessee Gas Pipeline	9th Rev. Vol. No. 1	Sub. 24th Rev. Sht. No. 12A and 12B, 1st Rev. Sht. 213Q. Orig. Sht. No. 213R and Orig. Sht. No. 213S.	3/15/79	4/1/79
Arkansas Louisiana Gas Co	Orig. Vol. No. 3	1st Sub. 17th Rev. Sht. No. 185, Orig. Sht. Nos. 188D, 188E, 188F and 188G.	3/15/79	4/1/79
	1st Rev. Vol. No. 1	Orig. Sht. Nos. 12F, 12G, 12H and 12I, 1st Sub. 19th Rev. Sht. No. 4.	3/15/79	4/1/79

Appendix B—Interventions

Southern Natural Gas Company (Atlanta Gas Light Company) (South Carolina Electric & Gas Company); Docket No. RP79–48.

Sea Robin Pipeline Company (Atlanta Gas Light Company); Docket No. RP79–45.

El Paso Natural Gas Company (Arizona Public Service Company) (Salt River Project Agricultural Improvement and Power District) (Southern California Gas Company) Docket No. RP79–37.

Columbia Gas Transmission Corporation (Elizabethtown Gas Company); Docket No. RP79–42.

Transcontinental Gas Pipe Line Corporation (South Jersey Gas Company) (Eastern Shore Natural Gas Company) (Atlanta Gas Light Company) (Philadelphia Gas Works'); Docket No. RP79–46.

Texas Eastern Transmission Corporation (Elizabethtown Gas Company) (Philadelphia Gas Works') (New Jersey Natural Gas Company); Docket No. RP79–40.

Michigan Wisconsin Pipe Line Company (Wisconsin Gas Company); Docket No. RP79–43.

Northern Natural Gas Comapny (Northern Municipal Defense Group And Minnesota Municipal Utilities Association) (Wisconsin Gas Company); Docket No. RP79–41.

[Docket Nos. RP79–53, etc.]

[FR Doc. 79–11089 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

A. Johnson & Co., Inc.; Extension of Time

April 3, 1979.

On March 20, 1979, the Secretary of Energy filed a motion for extension of time to file the administrative record and response to the petition for review in this proceeding. The motion states that addditional time is requested because of delay in receipt of the petition by Department of Energy counsel and the volume of material to be compiled.

Upon consideration, notice is hereby given that an extension of time is granted to and including April 16, 1979, for the filing of the record and reponse to the petition.

Kenneth F. Plumb,

Secretary.

[Docket No. RA 79–21]

[FR Doc. 79–11088 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

Central Power & Light Co. et al.; Extension of Time

April 2, 1979.

Central Power & Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company. Docket No. EL79–8.

On March 28, 1979, Southwestern Public Service Company filed a motion for extension of time to file a petition to intervene in this proceeding. The motion states that Southwestern has been considering its position in this proceeding and requires additional time because of the complexities of the matters involved.

Upon consideration, notice is herby given that an extension of time for filing protests and petitions to intervene in this proceeding is granted to and including April 13, 1979.

Kenneth F. Plumb,

Secretary.

[Docket No. EL79–8]

[FR Doc. 79–11075 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

Columbia Nitrogen Corp. and Nipro, Inc., Complainants v. Southern Natural Gas Co. and Transcontinental Gas Pipe Line Corp., Respondents; Extension of Time

April 3, 1979.

On February 15, 1979, Southern Natural Gas Company filed a motion for extension of time to answer the complaint filed in this proceeding on January 10, 1979. A similar request was filed by Transcontinental Gas Pipe Line Corporation on February 23, 1979. Both motions request additional time in order to review the allegations in the complaint. By letter received March 1, 1979, Complainants state that the matter is of serious concern and great damage to them and that they wish to inform Respondents on the continuing nature of the damages which they allege they are suffering.

Upon consideration, notice is hereby given that an extention of time is granted to and including April 13, 1979 for the filing of answers to the complaint.

Kenneth F. Plumb,

Secretary.

[Docket No. TC79–1]

[FR Doc. 79–11092 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

Determination By a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 2, 1979.

On March 21, 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.

FERC Control Number: JD79–1254
API Well Number: 34–007–20964–14
Section of NGPA: 103
Operator: Clarence K. Tussel, Jr.
Well Name: C. Cole #1
Field:
County: Ashtabula
Purchaser: East Ohio Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79–1255
API Well Number: 34–007–20952–14
Section of NGPA: 103
Operator: Clarence K. Tussel, Jr.
Well Name: E. Anderson #1
Field:
County: Ashtabula
Purchaser: East Ohio Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79–1256
API Well Number: 34–133–2–1676–14
Section of NGPA: 103
Operator: Smythco, Inc.
Well Name: King-Smythe Ventures #4
Field:
County: Portage
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79–1257
API Well Number: 34–151–2–2062–00–14
Section of NGPA: 103
Operator: Amtex Oil and Gas, Inc.
Well Name: Hiner Well #2
Field:
County: Stark
Purchaser:
Volume: 72 MMcf.

FERC Control Number: JD79–1258
API Well Number: 34–075–2–1820–14
Section of NGPA: 108
Operator: Killbuck Oil Field Service
Well Name: Paul R. Bakes #1B
Field: Killbuck
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 1899 MMcf.

FERC Control Number: JD79–1259
API Well Number: 34–075–2–1503–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: John J. Kurtz #1
Field: Benton
County: Holmes
Purchaser: Columbia Gas Transmission
Volume: 4.7 MMcf.

FERC Control Number: JD79–1260
API Well Number: 34–031–2–2445–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #4
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1261
API Well Number: 34–075–2–1501–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Abram Mast #1–3
Field: Benton
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.6 MMcf.

FERC Control Number: JD79–1262
API Well Number: 34–031–2446**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #5
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1263
API Well Number: 34–031–2–2785–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Esther T. Foster #3
Field: Warsaw
County: Coshocton
Purchaser: CCT
Volume: 1 MMcf.

FERC Control Number: JD79–1264
API Well Number: 34–031–2–2776–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Clyde Darr #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia gas Transmission
Volume: 1 MMcf.

FERC Control Number: JU79–1265
API Well Number: 34–031–2–2967–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Dwight H. Darr Unit #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 7.4 MMcf.

FERC Control Number: JD79–1266
API Well Number: 34–031–2–2437–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #1
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1267
API Well Number: 34–031–2–2444–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #3
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1268
API Well Number: 34–031–2–2697–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #10
Field: West Bedford
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1269
API Well Number: 34–031–2–2592–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #9
Field: New Guilford
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1270
API Well Number: 34–031–2–2448–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #7
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1271
API Well Number: 34–031–2–2968–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Lawrence R. Laughlin #3
Field: Warsaw
County: Coshocton
Purchaser: CGT
Volume: 14 MMcf.

FERC Control Number: JD79–1272
API Well Number: 34–031–2–2862–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: George Slaughter #1
Field: Warsaw
County: Coshocton
Purchaser: CGT
Volume: 3 MMcf.

FERC Control Number: JD79–1273
API Well Number: 34–105–2–1699–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: Milford & Dorothy Hall #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission
Volume: 2 MMcf.

FERC Control Number: JD79–1274
API Well Number: 34–105–2–1675–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: Lora & O.C. Gilpin #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission
Volume: N/A

FERC Control Number: JD79–1275
API Well Number: 34–105–2–1607–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: Addie Baker #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission
Volume: 6 MMcf.

FERC Control Number: JD79–1276
API Well Number: 34–105–2–1608–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: Elmer Bibbee #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission
Volume: 10 MMcf.

FERC Control Number: JD79–1277
API Well Number: 34–031–2–2777–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Marquis R. Welling #1
Field: Warsaw
County: Coshocton
Purchaser: CGT
Volume: 3.5 MMcf.

FERC Control Number: JD79–1278
API Well Number: 34–031–2–2261–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Kirkpatrick-Hickory Unit #1
Field: West Lafayette
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 1.1 MMcf.

FERC Control Number: JD79–1279
API Well Number: 34–157–2–1722–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: John L. Keim #11275
Field: Wilmot
County: Tuscarwas
Purchaser: Columbia Gas Transmission
Volume: 3.4 MMcf.

FERC Control Number: JD79–1280
API Well Number: 34–031–2–2344–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Earl D. Kissner #1–A
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: .3 MMcf.

FERC Control Number: JD79–1281
API Well Number: 34–031–2–2523–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Paul R. Haas #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: .5 MMcf.

FERC Control Number: JD79–1282
API Well Number: 34–075–2–1552–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Theron D. Hasseman #11281
Field: Wilmot
County: Holmes
Purchaser: Columbia Gas Transmission
Volume: 4.7 MMcf.

FERC Control Number: JD79–1283
API Well Number: 34–031–2–2739–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Howard M. Hartsock #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: .4 MMcf.

FERC Control Number: JD79–1284
API Well Number: 34–075–2–1494–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: J. Miller Unit #1–2
Field: Wilmot
County: Holmes
Purchaser: Columbia Gas Transmission
Volume: 2 MMcf.

FERC Control Number: JD79–1285
API Well Number: 34–075–2–1487–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Ida C. Langcamp Unit #1
Field: Winesburg
County: Holmes
Purchaser: Columbia Gas Transmission
Volume: 1.6 MMcf.

FERC Control Number: JD79–1286
API Well Number: 34–103–2–1836–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Majce-Slabaugh #11516
Field: Medina
County: Medina
Purchaser: Columbia Gas Transmission
Volume: 15 MMcf.

FERC Control Number: JD79–1287
API Well Number: 34–031–2–2786–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Francis Buxton #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 1 MMcf.

FERC Control Number: JD79–1288
API Well Number: 34–031–2–2447–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #6
Field: Mohawk Village
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1289
API Well Number: 34–031–2–2591–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Leroy F. Stuller #8
Field: West Bedford
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 2.6 MMcf.

FERC Control Number: JD79–1290
API Well Number: 34–103–2–1826–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: A. Koch and L. Lehman #11404
Field: Homersville
County: Medina
Purchaser: Columbia Gas Transmission
Volume: 9 MMcf.

FERC Control Number: JD79–1291
API Well Number: 34–031–2628–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Thurman Rausch #20195
Field: West Lafayette
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: .4 MMcf.

FERC Control Number: JD79–1292
API Well Number: 34–169–2–1594–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Roy L. Miller #1
Field: Mt. Eaton
County: Wayne
Purchaser: Columbia Gas Transmission
Volume: 4.3 MMcf.

FERC Control Number: JD79–1293
API Well Number: 34–075–2–1554–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Adam M. Miller Unit #11279
Field: Winesburg
County: Holmes
Purchaser: Columbia Gas Transmission
Volume: 5.7 MMcf.

FERC Control Number: JD79–1294
API Well Number: 34–169–2–166–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: R. Pepper Unit #1
Field: Wilmot
County: Wayne
Purchaser: Columbia Gas Transmission
Volume: 6.3 MMcf.

FERC Control Number: JD79–1295
API Well Number: 34–031–2–2754–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Robert G. Mohler #3
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 1.1 MMcf.

FERC Control Number: JD79–1296
API Well Number: 34–089–2–3559–**–14
Section of NGPA: 103
Operator: Hortin & Huffman
Well Name: Carl Schiffeler #1 (present owners—HAINS & McWey)
Field: Toboso
County: Licking
Purchaser: National Gas & Oil Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1297
API Well Number: 34–133–2–1237–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Ward-McHenry #1
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1.200 MMcf.

FERC Control Number: JD79–1298
API Well Number: 34–083–2–2545–**–14
Section of NGPA: 103
Operator: W. E. Shrider Co.
Well Name: W. F. Emlich #2
Field: N/A
County: Knox
Purchaser: Columbia Gas Transmission
Volume: 3 MMcf.

FERC Control Number: JD79–1299
API Well Number: 34–115–2–1639–**–14
Section of NGPA: 103
Operator: Future Energy Corporation
Well Name: P. Lawrence #1
Field: N/A
County: Morgan
Purchaser: Not Yet Determined
Volume: 12 MMcf.

FERC Control Number: JD79–1300
API Well Number: 34–031–2–3354–**–14
Section of NGPA: 103
Operator: W. E. Shrider Co.
Well Name: Paul Blair #1
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 3 MMcf.

FERC Control Number: JD79–1301
API Well Number: 34–127–2–3751–**–14

Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: K. D. Moore #2
Field:
County: Perry
Purchaser: Foraker Gas Company, Incorporated
Volume: 3 MMcf.

FERC Control Number: JD79-1302
API Well Number: 34-031-2-3285-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Kiser #1
Field:
County: Coshocton
Purchaser: Columbia Gas Transmission Corporation
Volume: 40 MMcf.

FERC Control Number: JD79-1303
API Well Number: 34-119-2-4456-**-14
Section of NGPA: 103
Operator: Unitex Limited
Well Name: Coulson #1
Field: N/A
County: Muskingum
Purchaser: Not Yet Determined
Volume: 35 MMcf.

FERC Control Number: JD79-1304
API Well Number: 34-127-2-4196-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Poston #1
Field:
County: Perry
Purchaser: National Gas & Oil Corporation
Volume: 4 MMcf.

FERC Control Number: JD79-1305
API Well Number: 34-127-2-4160-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: R. Hampton #1
Field:
County: Perry
Purchaser: Foraker Gas Company, Incorporated
Volume: 6 MMcf.

FERC Control Number: JD79-1306
API Well Number: 34-083-2-2419-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Wolfe #2
Field: Knox
County:
Purchaser: Columbia Gas Transmission Corporation
Volume: 2 MMcf.

FERC Control Number: JD79-1307
API Well Number: 34-083-2-2475-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: T. Clark #1
Field:
County: Knox
Purchaser: Columbia Gas Transmission Corporation
Volume: 2 MMcf.

FERC Control Number: JD79-1308
API Well Number: 34-083-2-2469-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Wolfe #3
Field:
County: Knox
Purchaser: Columbia Gas Transmission Corporation
Volume: 2 MMcf.

FERC Control Number: JD79-1309
API Well Number: 34-127-2-4071-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Adcock #1
Field:
County: Perry
Purchaser: Enterprise Gas & Oil, Inc.
Volume: 7 MMcf.

FERC Control Number: JD79-1310
API Well Number: 34-127-2-4082-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: F. Cooperrider #1
Field:
County: Perry
Purchaser: Columbia Gas Transmission Corporation
Volume: 5 MMcf.

FERC Control Number: JD79-1311
API Well Number: 34-009-2-1901-**-14
Section of NGPA: 103
Operator: Larry H. Wirght, Inc.
Well Name: Makr Grueser #1
Field:
County: Athens
Purchaser:
Volume: 10 MMcf.

FERC Control Number: JD79-1312
API Well Number: 34-059-2-2466-**-14
Section of NGPA: 103
Operator: Unitex Limited
Well Name: McCabce #1
Field:
County: Guernsey
Purchaser: The East Ohio Gas Company
Volume: 60 MMcf.

FERC Control Number: JD79-1313
API Well Number: 34-155-2-1170-**-14
Section of NGPA: 103
Operator: B & K Energy Company
Well Name: Friedkin-Weaver #1
Field:
County: Trumbill
Purchaser: Columbia Gas Transmission Corporation
Volume: 30 MMcf.

FERC Control Number: JD79-1314
API Well Number: 34-127-2-3912-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Reilly #1
Field:
County: Perry
Purchaser: Foraker Gas Company, Inc.
Volume: 7 MMcf.

FERC Control Number: JD79-1315
API Well Number: 34-059-2-2389-**-14
Section of NGPA: 103
Operator: Unitex Limited
Well Name: William L. Dunn #1
Field:
County: Guernsey
Purchaser: Gaspro Inc.
Volume: 54 MMcf.

FERC Control Number: JD79-1316
API Well Number: 34-119-2-4157-**-14
Section of NGPA: 103
Operator: The Clinton Oil Company
Well Name: Bert McConnell #1
Field:
County: Muskingum
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-1317
API Well Number: 34-052-2-2483-**-14
Section of NGPA: 103
Operator: Enterprise Gas & Oil, Inc.
Well Name: Wilbur Larrick #1
Field:
County: Guernsey
Purchaser:
Volume: 182.5 MMcf.

FERC Control Number: JD79-1318
API Well Number: 34-105-2-1740-14
Section of NGPA: 103
Operator: Althers Oil Inc.
Well Name: Swadley #1
Field: Langsville-Northeast
County: Meigs
Purchaser: Columbia Gas Transmission Corporation
Volume: 12.000 MMcf.

FERC Control Number: JD79-1319
API Well Number: 34-127-4142-**-14
Section of NGPA: 103
Operator: Altheirs Oil Inc.
Well Name: Russler #1
Field: Reading Township
County: Perry
Purchaser: Ohio Fuel Gas Co.
Volume: 19.000 MMcf.

FERC Control Number: JD79-1320
API Well Number: 34-155-2-1047-**-14
Section of NGPA: 103
Operator: Moran Coating and Construction Inc.
Well Name: Thomas #1
Field:
County: Trumbill
Purchaser: East Ohio Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79-1321
API Well Number: 34-031-2-3290-**-14
Section of NGPA: 103
Operator: Jadoil, Inc.
Well Name: L. Wrye-T. Biggs Unit #1
Field:
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-1322
API Well Number: 34-127-2-3976-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Massuros-Overfield #1
Field:
County: Perry
Purchaser: Foraker Gas Company, Inc.
Volume: 4 MMcf.

FERC Control Number: JD79-1323
API Well Number: 34-127-2-3975-**-14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: H. Klingler #1
Field:
County: Perry
Purchaser: Foraker Gas Company, Inc.
Volume: 5 MMcf.

FERC Control Number: JD79-1324
API Well Number: 34-083-2-2497-**-14
Section of NGPA: 103
Operator: Jerry C. Olds

Well Name: O. Johnson #6
Field:
County: Knox
Purchaser: Columbia Gas Transmission Corporation
Volume: 4 MMcf.

FERC Control Number: JD79–1325
API Well Number: 34–127–2–4205–**–14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Flower-Cordray #1
Field:
County: Perry
Purchaser: National Gas & Oil Corporation
Volume: 10 MMcf.

FERC Control Number: JD79–1326
API Well Number: 34–083–2–2551–**–14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: O. Johnson #7
Field:
County: Knox
Purchaser: Columbia Gas Transmission Corporation
Volume: 2 MMcf.

FERC Control Number: JD79–1327
API Well Number: 34–053–2–0398–**–14
Section of NGPA: 103
Operator: Altheirs Oil Inc.
Well Name: Fetty #1
Field: Addison Twp.
County: Gallia
Purchaser: Columbia Gas Transmission Corp.
Volume: 40,000 MMcf.

FERC Control Number: JD79–1328
API Well Number: 34–119–2–4382–**–14
Section of NGPA: 103
Operator: Cameron Bros.
Well Name: Ross Johnston #1
Field:
County: Muskingum
Purchaser:
Volume: 8.0 MMcf.

FERC Control Number: JD79–1329
API Well Number: Permit #2532; 34–083–3–2532–**–14
Section of NGPA: 103
Operator: Guardian Management, Inc.
Well Name: Edison and Cora Flack #1–A
Field:
County: Knox
Purchaser:
Volume: 14 MMcf.

FERC Control Number: JD79–1330
API Well Number: 34–133–2–1696–**–14
Section of NGPA: 103
Operator: R. H. Hutcheson
Well Name: John & Mabel Quin #4
Field: Quin
County: Portage
Purchaser: East Ohio Gas Co.
Volume: 50 MMcf.

FERC Control Number: JD79–1331
API Well Number: 34–169–2–2045–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Melvin Steiner Well #2
Field:
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79–1332
API Well Number: 34–169–2–1998–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Eli Stutzman Well #1
Field:
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 30 MMcf.

FERC Control Number: JD79–1333
API Well Number: 34–105–2–1514–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: James Duvall #1
Field:
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79–1334
API Well Number: 34–105–2–1462–**–00
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: George Collins #1
Field:
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–1335
API Well Number: 34–105–2–1515–**–14
Section of NGPA: 107
Operator: Liberty Oil & Gas Corp.
Well Name: Twila Clark #1
Field:
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 24 MMcf.

FERC Control Number: JD79–1336
API Well Number: 34–105–2–1525–**–00
Section of NGPA: 107
Operator: Liberty Oil & Gas Corporation
Well Name: W. A. Rice #1
Field:
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 8 MMcf.

FERC Control Number: JD79–1337
API Well Number: 34–031–2–3313–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: Owen Brenly #3
Field:
County: Coshocton
Purchaser:
Volume: 28 MMcf.

FERC Control Number: JD79–1338
API Well Number: 34–151–2–2061–00–14
Section of NGPA: 103
Operator: Amtex Oil and Gas, Inc.
Well Name: Hiner Well No. 1
Field:
County: Stark
Purchaser:
Volume: 36 MMcf.

FERC Control Number: JD79–1339
API Well Number: 34–031–2–1399–14
Section of NGPA: 103
Operator: Andrew H. McConnell
Well Name: Maxine Young #1
Field:
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 30 MMcf.

FERC Control Number: JD79–1340
API Well Number: 34–115–2–1581–**–14
Section of NGPA: 103
Operator: Ohio Production Corp.
Well Name: C. O. Engle #1
Field:
County: Morgan
Purchaser: Columbia Gas Transmission Corporation
Volume: 20 MMcf.

FERC Control Number: JD79–1341
API Well Number: 34–157–2–3203–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: Raymond Reed #1
Field:
County: Tuscarawas
Purchaser:
Volume: 25 MMcf.

FERC Control Number: JD79–1342
API Well Number: 34–119–2–4540–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: N. Roberts #1
Field:
County: Muskingum
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79–1343
API Well Number: 34–151–2–2915–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: Ernest Ross #1
Field:
County: Stark
Purchaser: East Ohio Gas Company
Volume: 17 MMcf.

FERC Control Number: JD79–1344
API Well Number: 34–157–2–3266–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: Speer-Clarke Unit #1
Field:
County: Tuscarawas
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79–1345
API Well Number: 34–133–2–1064–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: Cunningham-Mancz Unit #1
Field:
County: Portage
Purchaser:
Volume: 17 MMcf.

FERC Control Number: JD79–1346
API Well Number: 34–133–2–1630–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Knipper Well #2
Field:
County: Portage
Purchaser: Ulery Greenhouse Company
Volume: 14,184 MMcf.

FERC Control Number: JD79–1347
API Well Number: 34–133–2–1632–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Knipper Well No. 1
Field:
County: Portage
Purchaser: Ulery Greenhouse Company
Volume: 14,184 MMcf.

FERC Control Number: JD79–1348
API Well Number: 34–169–2–2066—**–14
Section of NGPA: 103

Operator: Paul I. Obermiller
Well Name: Kenneth Bauman #1
Field:
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79-1349
API Well Number: 34-103-2-2040-**-14
Section of NGPA: 103
Operator: Paul J. Obermiller
Well Name: Earl Rupp #2
Field:
County: Medina
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79-1350
API Well Number: 34-031-2-3402-**-14
Section of NGPA: 103
Operator: The Clinton Oil Company
Well Name: Corah Schuler #1
Field:
County: Coshocton
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79-1351
API Well Number: 34-119-2-4537-**-14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: R. Strawser #2
Field:
County: Muskingum
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79-1352
API Well Number: 34-115-2-1585-**-14
Section of NGPA: 103
Operator: Ohio Production Corp.
Well Name: James Carrick #2
Field:
County: Morgan
Purchaser: Columbia Gas Transmission Corp.
Volume: 11 MMcf.

FERC Control Number: JD79-1353
API Well Number: 32-119-2-4413-**-14
Section of NGPA: 103
Operator: Temple Oil & Gas Co.
Well Name: Harold Harney #1
Field:
County: Muskingum
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: JD79-1354
API Well Number: 34-115-2-1448-**-14
Section of NGPA: 103
Operator: Ohio Production Corp.
Well Name: O. D. Baker #1
Field:
County: Morgan
Purchaser: Columbia Gas Transmission Corporation
Volume: 14 MMcf.

FERC Control Number: JD79-1355
API Well Number: 34-111-2-1881-**-14
Section of NGPA: 103
Operator: Buckeye Oil Producing Co.
Well Name: Bearmore #1
Field:
County: Monroe
Purchaser: River Gas Co.
Volume: 8 MMcf.

FERC Control Number: JD79-1356
API Well Number: 34-111-2-1882-**-14
Section of NGPA: 103
Operator: Buckeye Oil Producing Co.
Well Name: Landefeld #2
Field:
County: Monroe
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79-1357
API Well Number: 34-133-2-1218-**-14
Section of NGPA: 103
Operator: Vicking Resources Corporation
Well Name: James A. Eagleson Unit #1
Field:
County: Portage
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-1358
API Well Number: 34-133-2-1269-*-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Jones #2
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 8,070 MMcf.

FERC Control Number: JD79-1359
API Well Number: 34-133-22-1507-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Thompson Alger #3
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 4,320 MMcf.

FERC Control Number: JD79-1360
API Well Number: 34-133-2-1034-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Jackson Well #1
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 6643 MMcf.

FERC Control Number: JD79-1361
API Well Number: 34-133-2-1010-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Peters Well #2
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 22,271 MMcf.

FERC Control Number: JD79-1362
API Well Number: 34-133-2-0782
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: M. Pochedly Well #1-A
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 17,087 MMcf.

FERC Control Number: JD79-1363
API Well Number: 34-133-2-1502-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Wolff Well #2
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 12; 156 MMcf.

FERC Control Number: JD79-1364
API Well Number: 34-133-2-1215-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Wolff Well #1
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 17,815 MMcf.

FERC Control Number: JD79-1365
API Well Number: 34-133-2-0828-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Weber Well #2
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 41,395 MMcf.

FERC Control Number: JD79-1366
API Well Number: 34-133-2-3081-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Thomas Well #1
Field:
County: Coshocton
Purchaser: East Ohio Gas Company
Volume: 13,920 MMcf.

FERC Control Number: JD79-1367
API Well Number: 34-031-2-3295-**-14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: James Bechtol #4
Field:
County: Coshocton
Purchaser:
Volume: 28 MMcf.

FERC Control Number: JD79-1368
API Well Number: 34-085-2-0250-14
Section of NGPA: 103
Operator: Drillex, Inc.
Well Name: Iresger #1
Field: Painesville Township
County: Lake
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79-1369
API Well Number: 34-133-2-1433-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Schuster-Alger Well #1
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 19,563 MMcf.

FERC Control Number: JD79-1370
API Well Number: 34-133-2-1145-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Salo Well #1
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 5,612 MMcf.

FERC Control Number: JD79-1371
API Well Number: 34-133-2-1446-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Robinson Well #2
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 6,799 MMcf.

FERC Control Number: JD79-1372
API Well Number: 34-133-2-1434-**-14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Robinson Well #1

Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 6,799 MMcf.

FERC Control Number: JD79–1373
API Well Number: 34–133–2–1153–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Reserve
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 12,508 MMcf.

FERC Control Number: JD79–1374
API Well Number: 34–133–2–1026–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Rand Well #1
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 15,470 MMcf.

FERC Control Number: JD79–1375
API Well Number: 34–133–2–1179–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Price Well #2
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 7,488 MMcf.

FERC Control Number: JD79–1376
API Well Number: 34–133–2–1014–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: M. Pochedly Well #1–B
Field:
County: Portage
Purchaser: East Ohio Gas Company
Volume: 21,996 MMcf.

FERC Control Number: JD79–1377
API Well Number: 34–133–2–0985–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Peters Well #3
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 22,271 MMcf.

FERC Control Number: JD79–1378
API Well Number: 34–133–2–0984–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Peters Well #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 22,271 MMcf.

FERC Control Number: JD79–1379
API Well Number: 34–133–2–1013–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Kogler Well #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 9,159 MMcf.

FERC Control Number: JD79–1380
API Well Number: 34–133–2–1635–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Knipper Well #4
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 14,184 MMcf.

FERC Control Number: JD79–1381
API Well Number: 34–133–2–1144–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Jahn Well #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 5,632 MMcf.

FERC Control Number: JD79–1382
API Well Number: 34–133–2–1515–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Sprogis #2
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 15,120 MMcf.

FERC Control Number: JD79–1383
API Well Number: 34–133–2–0688–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Frost Well #4
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 4,497 MMcf.

FERC Control Number: JD79–1384
API Well Number: 34–133–2–1126–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #8
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 6,827 MMcf.

FERC Control Number: JD79–1385
API Well Number: 34–133–2–1127–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #6
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 6,827 MMcf.

FERC Control Number: JD79–1386
API Well Number: 34–133–2–1160–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Chulainn, Inc. #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 8,318 MMcf.

FERC Control Number: JD79–1387
API Well Number: 34–133–2–1057–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Brosius Well #3
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 8,600 MMcf.

FERC Control Number: JD79–1388
API Well Number: 34–133–2–1011–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Perge Well #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 1,696 MMcf.

FERC Control Number: JD79–1389
API Well Number: 34–133–2–1125–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #9
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 10,635 MMcf.

FERC Control Number: JD79–1390
API Well Number: 34–133–2–0995–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #2
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 75,090 MMcf.

FERC Control Number: JD79–1391
API Well Number: 34–133–2–1279–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Leet #1
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 34,950 MMcf.

FERC Control Number: JD79–1392
API Well Number: 34–133–2–1022–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Kolody-Evans #2
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 3,944 MMcf.

FERC Control Number: JD79–1393
API Well Number: 34–133–2–1259–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Jones #3
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 8,070 MMcf.

FERC Control Number: JD79–1394
API Well Number: 34–133–2–1241–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Brosius Well #3–A
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 8,600 MMcf.

FERC Control Number: JD79–1395
API Well Number: 34–133–2–1253–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Jones #1
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 8,070 MMcf.

FERC Control Number: JD79–1396
API Well Number: 34–133–2–1072–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Denk #1
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation

Volume: 6,604 MMcf.

FERC Control Number: JD79–1397
API Well Number: 34–133–2–1159–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Chulainn, Inc. #2
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 8,318 MMcf.

FERC Control Number: JD79–1398
API Well Number: 34–133–2–1021–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Brosius Well #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 3,572 MMcf.

FERC Control Number: JD79–1399
API Well Number: 34–133–2–1470–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: H. Carlisle #3
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume:

FERC Control Number: JD79–1400
API Well Number: 34–133–2–835–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: R. Carlisle #3
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 16,532 MMcf.

FERC Control Number: JD79–1401
API Well Number: 34–133–2–1522–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #4
Field: N/A
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 14,184 MMcf.

FERC Control Number: JD79–1402
API Well Number: 34–133–2–1124–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #3
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 26,571 MMcf.

FERC Control Number: JD79–1403
API Well Number: 34–133–2–1023–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Kolody-Evand #1
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 4,419 MMcf.

FERC Control Number: JD79–1404
API Well Number: 34–133–2–156–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: R. Carlisle #4
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 2,904 MMcf.

FERC Control Number: JD79–1405
API Well Number: 34–133–2–1118–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #5
Field:
County: Portage
Purchaser: Asnchor Hocking Corporation
Volume: 11,300 MMcf.

FERC Control Number: JD79–1406
API Well Number: 34–133–2–1024–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: United Methodist Church #1
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 11,097 MMcf.

FERC Control Number: JD79–1407
API Well Number: 34–133–2–1505–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Thompson Alger #2
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 14,260 MMcf.

FERC Control Number: JD79–1408
API Well Number: 34–133–2–1506–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Thompson Alger #1
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 14,184 MMcf.

FERC Control Number: JD79–1409
API Well Number: 34–133–2–0912–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Pollock #2
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 11,066 MMcf.

FERC Control Number: JD79–1410
API Well Number: 34–133–2–1043–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Pochedly #6
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 11,721 MMcf.

FERC Control Number: JD79–1411
API Well Number: 34–133–2–1105–**–14
Section of NGPA: 103
Operator: Nucorp Energy Company
Well Name: Miner #7
Field:
County: Portage
Purchaser: Anchor Hocking Corporation
Volume: 11,300 MMcf.

FERC Control Number: JD79–1412
API Well Number: 34–075–2–1961–**–14
Section of NGPA: 103
Operator: Buckeye Oil Producing Company
Well Name: Chupp #1
Field:
County: Holmes
Purchaser: Columbia Gas Transmission Corporation
Volume: 18 MMcf.

FERC Control Number: JD79–1413
API Well Number: 34–075–2–2056–**–14
Section of NGPA: 103
Operator: Buckeye Oil Producing Company
Well Name: Wolgamot 38 #2
Field:
County: Holmes
Purchaser: Columbia Gas Transmission Corporation
Volume: 4 MMcf.

FERC Control Number: JD79–1414
API Well Number: 34–115–2–1515–**–14
Section of NGPA: 103
Operator: Ohio Production Corporation
Well Name: Margaret Spillman #1
Field:
County: Morgan
Purchaser: Columbia Gas Transmission Corporation
Volume: 52 MMcf.

FERC Control Number: JD79–1415
API Well Number: 34–115–2–1425–**–14
Section of NGPA: 103
Operator: Ohio Production Corporation
Well Name: J. B. Bigley #1
Field:
County: Morgan
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79–1416
API Well Number: 34–169–2–2089–**–14
Section of NGPA: 103
Operator: Frank A. Csapo Jr.
Well Name: Earl Rupp #1
Field:
County: Wayne
Purchaser: Columbia Gas Transmission Corporation
Volume: 20 MMcf.

FERC Control Number: JD79–1417
API Well Number: 34–133–2–1300–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Kinsey Unit #2
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1418
API Well Number: 34–133–2–1251–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: K. Allen Groh #1
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1419
API Well Number: 34–133–2–1250–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Kinsey Unit #1
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1420
API Well Number: 34–133–2–1366–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Ward Mchenry #2
Field:
County: Portage
Purchaser: The East Ohio Gas Company

Volume: 1,200 MMcf.

FERC Control Number: JD79–1421
API Well Number: 34–133–2–1492–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #17
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1422
API Well Number: 34–133–2–1491–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #16
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1423
API Well Number: 34–133–2–1489–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #15
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1424
API Well Number: 34–133–2–1490–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #14
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1425
API Well Number: 34–133–2–1482–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #13
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1426
API Well Number: 34–133–2–1480–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner Unit #12
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1427
API Well Number: 34–133–2–1481–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #11
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1428
API Well Number: 34–133–2–1467–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #10
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1429
API Well Number: 34–133–2–1469–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #9
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1430
API Well Number: 34–133–2–1468–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #8
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1431
API Well Number: 34–133–2–1474–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #7
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1432
API Well Number: 34–133–2–1474–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #6
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1433
API Well Number: 34–133–2–1383–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #5
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1434
API Well Number: 34–133–2–1384–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #4
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1435
API Well Number: 34–133–2–1385–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #3
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1436
API Well Number: 34–133–2–1371–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #2
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1437
API Well Number: 34–133–2–1382–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Capps Hollendonner #1
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1438
API Well Number: 34–133–2–1560–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Kinsey Unit#5
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1439
API Well Number: 34–133–2–1367–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Kinsey Unit#4
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 MMcf.

FERC Control Number: JD79–1440
API Well Number: 34–133–2–1301–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Kinsey Unit#3
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200 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 within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.
[FR Doc. 79–11077 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 2, 1979.

On March 21, 1979, the Federal Energy Regulartory 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.

Ohio Department of Natural Resources Division of Oil and Gas

FERC Control Number: JD79–1189
API Well Number: 34–151–2–2271–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: H. Bonheimer #1
Field: Mt. Eaton
County: Stark
Purchaser: Columbia Gas Transmission Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–1190
API Well Number: 34–151–2–2884—14
Section NGPA: 103
Operator: Belden & Blake and Co. L. P. No. 68
Well Name: N. & W. R.R. Comm. #1–852
Field: N/A
County: Stark
Purchaser: East Ohio Gas Company
Volume: 36.5 MMcf.

FERC Control Number: JD79–1191
API Well Number: 34–151–2–2903–**–14
Section NGPA: 103
Operator: Belden & Blake and Co. L. P. No. 69
Well Name: W. Wefler #5–861
Field: N/A
County: Stark
Purchaser: East Ohio Gas Company
Volume: 36.5 MMcf.

FERC Control Number: JD79–1192
API Well Number: 34–157–2–3223–**–14
Section NGPA: 103
Operator: Belden & Blake and Co. L. P. No. 69
Well Name: Russell Baltzly #2–865
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Company
Volume: 36.5 MMcf.

FERC Control Number: JD79–1193
API Well Number: 34–151–2–2917–**–14
Section NGPA: 103
Operator: Belden & Blake and Co. L. P. No. 69
Well Name: C & M Shilling #3–866
Field: N/A
County: Stark
Purchaser: East Ohio Gas Company
Volume: 36.5 MMcf.

FERC Control Number: JD79–1194
API Well Number: 34–119–2–4430–**–14
Section NGPA: 103
Operator: Irvin Producing Company
Well Name: Don Davis #1
Field: N/A
County: Muskingum
Purchaser: National Gas & Oil Corporation
Volume: 6 MMcf.

FERC Control Number: JD79–1195
API Well Number: 34–031–2–2440–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Delmor D. Cottrell #3
Field: West Bedrord
County: Coshocton
Purchaser: CGT
Volume: .2 MMcf.

FERC Control Number: JD79–1196
API Well Number: 34–031–2–2241–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Delmor D. Cottrell #4
Field: West Bedford
County: Coshocton
Purchaser: CGT
Volume: .2 MMcf.

FERC Control Number: JD79–1197
API Well Number: 34–031–2–2772–2–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Lawrence R. Laughlin #1
Field: Warsaw
County: Coshocton
Purchaser: CGT
Volume: 17 MMcf.

FERC Control Number: JD79–1198
API Well Number: 34–031–2–2774–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Lawrence R. Laughlin #2
Field: Warsaw
County: Coshocton
Purchaser: CGT
Volume: 12 MMcf.

FERC Control Number: JD79–1199
API Well Number: 34–031–2–2439–**–14
Section NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Delmor Cottrell #2
Field: Tunnel Hill
County: Coshocton
Purchaser: CGT
Volume: .2 MMcf.

FERC Control Number: JD79–1200
API Well Number: 34–031–2–2614–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Milton Y. Pigman #1
Field: West Bedford
County: Coshocton
Purchaser: CGT
Volume: .2 MMcf.

FERC Control Number: JD79–1201
API Well Number: 34–031–2–2407–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Delmor D. Cottrell #1
Field: West Bedford
County: Coshocton
Purchaser: CGT
Volume: .2 MMcf.

FERC Control Number: JD79–1202
API Well Number: 34–031–2–2685–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Stephen J. Kaple #1
Field: Union School
County: Coshocton
Purchaser: CGT
Volume: .3 MMcf.

FERC Control Number: JD79–1203
API Well Number: 34–031–2–2684–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Stephen J. Kaple #2
Field: West Bedford
County: Coshocton
Purchaser: CGT
Volume: .3 MMcf.

FERC Control Number: JD79–1204
API Well Number: 34–151–2–2393–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Warren H. Wefler #5292
Field: Mt. Eaton
County: Stark
Purchaser: EOG
Volume: 10 MMcf.

FERC Control Number: JD79–1205
API Well Number: 34–151–2–2272–**–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Warren Wefler #1
Field: Mt. Eaton
County: Stark
Purchaser: CGT
Volume: 6.2 MMcf.

FERC Control Number: JD79–1206
API Well Number: 34–121–1920–**–14
Section of NGPA: 108
Operator: Dallas Bond
Well Name: N. Bond–Weirton Steel W–12
Field: N/A
County: Noble
Purchaser: Not Yet Determined
Volume: 2.2 MMcf.

FERC Control Number: JD79–1207
API Well Number: 34–105–2–1714–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Clyde Morlan #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1208
API Well Number: 34–031–2–3271–**–14
Section of NGPA: 103
Operator: Frank W. Hoover Prod.
Well Name: Joe & Anna Schindler #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1209
API Well Number: 34–133–2–1676–**–14
Section of NGPA: 103
Operator: Smythco, Inc.
Well Name: King-Smythe Ventures #1
Field: N/A
County: Portage
Purchaser: Not Yet Determined
Volume: 20 MMcf.

FERC Control Number: JD79–1210
API Well Number: 34–021–2–3355–**–14
Section of NGPA: 103
Operator: ConPetro, Inc.
Well Name: Blair #1
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corporation
Volume: 20 MMcf.

FERC Control Number: JD79–1211
API Well Number: 34–053–2–0227–**–14
Section of NGPA: 103
Operator: Cameron & Kincaid
Well Name: James Baird #5
Field: N.A.
County: Gallia
Purchaser: Not Yet Determined
Volume: 4.2 MMcf.

FERC Control Number: JD79–1212
API Well Number: 34–119–2–4501–**–14
Section of NGPA: 103
Operator: Cameron Bros.
Well Name: William P. Miller #1
Field: N/A
County: Muskingum
Purchaser: Not Yet Determined

Volume: 7.0 MMcf.

FERC Control Number: JD79–1213
API Well Number: 34–053–2–0226–**–14
Section of NGPA: 103
Operator: Cameron & Kincaid
Well Name: James Baird #6
Field: N/A
County: Gallia
Purchaser: Not Yet Determined
Volume: 4.2 MMcf.

FERC Control Number: JD79–1214
API Well Number: 34–055–2–0283–**–14
Section of NGPA: 103
Operator: Collins-McGregor Operating Company
Well Name: Grandview-Johnson #1
Field:
County: Geauga
Purchaser: Not Yet Determined
Volume: 40.15 MMcf.

FERC Control Number: JD79–1215
API Well Number: 34–055–0–0285–**–14
Section of NGPA: 103
Operator: Collins-McGregor Operating Company
Well Name: Grandview-Johnson #2
Field:
County: Geauga
Purchaser: Not Yet Determined
Volume: 36.5 MMcf.

FERC Control Number: JD79–1216
API Well Number: 34–055–2–0284–**–14
Section of NGPA: 103
Operator: Collins-McGregor Operating Company
Well Name: Grandview-Johnson #3
Field:
County: Geauga
Purchaser: Not Yet Determined
Volume: 43.8 MMcf.

FERC Control Number: JD79–1217
API Well Number: 34–110–2–4402–**–14
Section of NGPA: 103
Operator: Hopewell Oil and Gas Development Co.
Well Name: Quincy Merew #1
Field: N/A
County: Muskingum
Purchaser: National Gas and Oil Corporation
Volume: 10 MMcf.

FERC Control Number: JD79–1218
API Well Number: 34–119–2–4432–**–14
Section of NGPA: 103
Operator: Porter Brothers
Well Name: Robert L. Porter #2
Field: N/A
County: Muskingum
Purchaser: National Gas and Oil Corporation
Volume: 8 MMcf.

FERC Control Number: JD79–1219
API Well Number: 34–059–2–2319–**–14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Alexander #1
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 48 MMcf.

FERC Control Number: JD79–1220
API Well Number: 34–059–2–2456–**—14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Paul Alexander #1
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 51.1 MMcf.

FERC Control Number: JD79–1221
API Well Number: 34–031–2–3021–**–14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Rehard #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 5.475 MMcf.

FERC Control Number: JD79–1222
API Well Number: 34–059–2–2086–**–14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Rehard #1a
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 21.6 MMcf.

FERC Control Number: JD79–1223
API Well Number: 34–059–2–2087–**–14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Rehard #2
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 25.5 MMcf.

FERC Control Number: JD79–1224
API Well Number: 34–059–2–2318–**–14
Section of NGPA: 103
Operator: Bauman Oil & Gas Co., Inc.
Well Name: Bauman Alexander #2
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 35.5 MMcf.

FERC Control Number: JD79–1225
API Well Number: 34–169–2–2009–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Homer Steiner Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume:

FERC Control Number: JD79–1226
API Well Number: 34–127–2–4234–**–14
Section of NGPA: 103
Operator: L&M Exploration, Inc.
Well Name: Lewis-Peabody #1
Field: N/A
County: Perry
Purchaser: National Gas & Oil
Volume: 9125 MMcf

FERC Control Number: JD79–1227
API Well Number: 34–119–2–4513–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: R. Strawser #1
Field: N/A
County: Muskingum
Purchaser: Not Yet Determined
Volume: 19 MMcf

FERC Control Number: JD79–1228
API Well Number: 34–169–2–1940–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Ronald Nussbaum Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 27 MMcf

FERC Control Number: JD79–1229
API Well Number: 34–169–2–2030–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Joe M. Zook Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 45 MMcf

FERC Control Number: JD79–1230
API Well Number: 34–151–2–2875–**–14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: M. Hollaway #1
Field: N/A
County: Stark
Purchaser: Not Yet Determined
Volume: 16 MMcf

FERC Control Number: JD79–1231
API Well Number: 34–169–2–2011–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: A. J. Hershberger Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 24 MMcf

FERC Control Number: JD79–1232
API Well Number: 34–169–2–2011–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Gerber Well Unit #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 7 MMcf

FERC Control Number: JD79–1233
API Well Number: 34–169–2–2008–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Willia Gerber Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 26 MMcf

FERC Control Number: JD79–1234
API Well Number: 34–169–2–2048–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Harold Gerber Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 10 MMcf

FERC Control Number: JD79–1235
API Well Number: 34–169–2–1949–**–14
Section of NGPA: 103
Operator: Ponderosa Oil Company
Well Name: Melvin Steiner Well #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 7 MMcf

FERC Control Number: JD79–1236
API Well Number: 34–089–2–3525–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Wilkins #2
Field: N/A
County: Licking

Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1237
API Well Number: 34–089–2–3505–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Hazlett #1
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1238
API Well Number: 34–089–2–3507–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Cummons
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1239
API Well Number: 34–089–2–3524–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Rostofer #1
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1240
API Well Number: 34–089–2–3523–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Boyer #1
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1241
API Well Number: 34–089–2–3506–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Cummons #2
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1242
API Well Number: 34–089–2–3521–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Wilkin #1
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1243
API Well Number: 34–089–2–3508–**–14
Section of NGPA: 103
Operator: American Well Management Company
Well Name: Cummons #1
Field: N/A
County: Licking
Purchaser: Not Yet Determined
Volume: 18 MMcf.

FERC Control Number: JD79–1244
API Well Number: 34–127–2–4110–**–14
Section of NGPA: 103
Operator: Petro-Lewis Corporation
Well Name: Wood #3, Gerald
Field: N/A
County: Perry
Purchaser: Columbia Gas Transmission
Volume: 7.5 MMcf.

FERC Control Number: JD79–1245
API Well Number: 34–119–2–4439–**–14
Section of NGPA: 103
Operator: Tiger Oil, Inc.
Well Name: Fred Culbertson #4
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Company
Volume: 10 MMcf.

FERC Control Number: JD79–1246
API Well Number: 34–157–2–3204–**–14
Section of NGPA: 103
Operator: Orion Energy Corp.
Well Name: D. Felgenhauer Unit #1
Field: N.A
County: Tuscarawas
Purchaser: Not Yet Determined
Volume: 30 MMcf.

FERC Control Number: JD79–1247
API Well Number: 34–169–2–2085–14
Section of NGPA: 103
Operator: Buckeye Oil Producing Co.
Well Name: Franks #2
Field: N/A
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1248
API Well Number: 34–075–2–2072–**–14
Section of NGPA: 103
Operator: Buckeye Oil Producing Co.
Well Name: Hipp-Steimer #3
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 14 MMcf.

FERC Control Number: JD79–1249
API Well Number: 34–075–2–2100–**–14
Section of NGPA: 103
Operator: Buckeye Oil Producing Co.
Well Name: Melvin Miller #2
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 14 MMcf.

FERC Control Number: JD79–1250
API Well Number: 34–157–2–3164–**–14
Section of NGPA: 103
Operator: H. I. Snyder
Well Name: Carruthers #2
Field: N/A
County: Tuscarawas
Purchaser: Not Yet Determined
Volume: 35,000.0 MMcf.

FERC Control Number: JD79–1251
API Well Number: 34–103–2–2023–**–14
Section of NGPA: 103
Operator: H. E. Rupp
Well Name: Spirnak #1
Field: N/A
County: Medina
Purchaser: Not Yet Determined
Volume: 30 MMcf.

FERC Control Number: JD79–1252
API Well Number: 34–127–2–4109–**–14
Section of NGPA: 103
Operator: Petro-Lewis Corporation
Well Name: Wood #2, Gerald
Field: N/A
County: Perry
Purchaser: Columbia Gas Transmission
Volume: 7.3 MMcf.

FERC Control Number: JD79–1253
API Well Number: 34–105–2–1694–**–14
Section of NGPA: 103
Operator: Petro-Lewis Corporation
Well Name: King #1, Robert
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission
Volume: 14.6 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, N.E., 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 within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79–11078 Filed 4–9–79; 8:45 am]

BILLING CODE 6450–01–M

Determination By a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 2, 1979.

On March 21, 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.

Ohio Department of Natural Resources Division of Oil and Gas

FERC Control Number: JD79–1538
API Well Number: 34–089–2–3490–**–14
Section of NGPA: 103
Operator: Oxford Oil Company
Well Name: Jesse Montgomery 2–A
Field: N/A
County: Licking
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1539
API Well Number: 34–119–2–4421–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: M. Fritz-Caster #1

Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 9.0 MMcf.

FERC Control Number: JD79–1540
API Well Number: 34–089–2–3361–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Jesse Montgomery #1
Field: N/A
County: Licking
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1541
API Well Number: 34–089–2–3527–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Jesse Montgomery #4
Field: N/A
County: Licking
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1542
API Well Number: 34–119–2–4363–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: John L. Scanlon #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1543
API Well Number: 34–119–3–4362–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Charles Elmore #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 6.0 MMcf.

FERC Control Number: JD79–1544
API Well Number: 34–119–2–4461–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Gerald Williamson #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1545
API Well Number: 34–119–2–4385–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Alpine-Botson #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1546
API Well Number: 34–119–2–4476–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Damon Kennison #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1547
API Well Number: 34–119–2–4475–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Wayne Eppley #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1548
API Well Number: 34–089–2–3510–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Jesse Montogomery #3
Field: N/A
County: Licking
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1549
API Well Number: 34–127–2–4203–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Perry Co. Cheese #1
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 5.0 MMcf.

FERC Control Number: JD79–1550
API Well Number: 34–119–2–4415–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Edward Wickham #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1551
API Well Number: 34–031–2–3235–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Donald Richards #1
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 5.0 MMcf.

FERC Control Number: JD79–1552
API Well Number: 34–031–2–3296–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Robert Borden #1
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1553
API Well Number: 34–031–2–3079–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: James Lee #2
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1554
API Well Number: 34–045–2–0598–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: George Yeager #1
Field: N/A
County: Fairfield
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1555
API Well Number: 34–119–2–4369–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Greg Stevens #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 3.0 MMcf.

FERC Control Number: JD79–1556
API Well Number: 34–127–2–3990–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Lowell Koehler #2
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1557
API Well Number: 34–127–2–4003
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Mary M. Woods #2
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 12.0 MMcf.

FERC Control Number: JD79–1558
API Well Number: 34–127–2–4065–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Rebecca Griffith #3
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1559
API Well Number: 34–119–2–4089–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Fred Lenhart #3
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 9.0 MMcf.

FERC Control Number: JD79–1560
API Well Number: 34–031–2–3095–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Maston Fowler #3
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1561
API Well Number: 34–127–2–3923–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Rebecca Griffith #2
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 9.0 MMcf.

FERC Control Number: JD79–1562
API Well Number: 34–119–2–3955–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Fred Lenhart #2
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1563
API Well Number: 34–085–2–0253–**–14
Section of NGPA: 103
Operator: Petro Evaluation Services, Inc.
Well Name: Lake Erie College #1
Field: Painesville South
County: Lake
Purchaser: East Ohio Gas

Volume: 24 MMcf.

FERC Control Number: JD79–1564
API Well Number: 34–127–2–3994–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Lowell Koehler #4
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1565
API Well Number: 34–089–2–3469–**–14
Section of NGPA: 103
Operator: Jonsu Corp.
Well Name: Sands #1
Field: N/A
County: Licking
Purchaser: Natural Gas & Oil Corp.
Volume: 8 MMcf.

FERC Control Number: JD79–1566
API Well Number: 34–119–2–4337–**–13
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Robert Dennis #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1567
API Well Number: 34–009–2–1890–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. 41R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1568
API Well Number: 34–009–2–1862–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. 35R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1569
API Well Number: 34–045–2–0603–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Clyde Bauman #1
Field: N/A
County: Fairfield
Purchaser: Columbia Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1570
API Well Number: 34–157–2–3207–**–14
Section of NGPA: 103
Operator: Orion Energy Corp.
Well Name: T. Felgenhauer #1
Field: N/A
County: Tuscarawas
Purchaser: Not yet determined
Volume: 35 MMcf.

FERC Control Number: JD79–1571
API Well Number: 34–059–2–2486–**–14
Section of NGPA: 103
Operator: Unitex Limited
Well Name: McCance #2
Field: N/A
County: Guernsey
Purchaser: The East Ohio Gas Company
Volume: 108 MMcf.

FERC Control Number: JD79–1572
API Well Number: 34–089–2–3549–**–14
Section of NGPA: 103
Operator: Hoover Producing & Operating
Well Name: T. & E. Hite No. 1
Field: Reform-Perry
County: Licking
Purchaser: Nat'l Gas & Oil Corporation
Volume: 12.00 MMcf.

FERC Control Number: JD79–1573
API Well Number: 34–075–2–2073–**–14
Section of NGPA: 103
Operator: Morgan-Pennington, Inc.
Well Name: Hoff No. 1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 18.25 MMcf.

FERC Control Number: JD79–1574
API Well Number: 34–009–2–1871–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. 39R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1575
API Well Number: 34–157–2–3119–**–14
Section of NGPA: 103
Operator: Orion Energy Corp.
Well Name: Red Malcuit #2
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1576
API Well Number: 34–121–2–2129–**–14
Section of NGPA: 103
Operator: Tiger Oil, Inc.
Well Name: Sergis Michael B–2
Field: N/A
County: Nobel
Purchaser:
Volume: 25 MMcf.

FERC Control Number: JD79–1577
API Well Number: 32–121–2–1982–**–14
Section of NGPA: 103
Operator: Tiger Oil, Inc.
Well Name: Sergis Michael #1
Field: N/A
County: Nobel
Purchaser:
Volume: 25 MMcf.

FERC Control Number: JD79–1578
API Well Number: 34–133–2–1739–**–14
Section of NGPA: 103
Operator: Orion Energy Corp.
Well Name: Timberlake Unit #1
Field: N/A
County: Portage
Purchaser: Not yet determined
Volume: 34 MMcf.

FERC Control Number: JD79–1579
API Well Number: 34–151–2–2826–**–14
Section of NGPA: 103
Operator: Franklin Gas & Oil Co., Inc.
Well Name: George W. Werstler No. 1
Field: N/A
County: Stark
Purchaser: Columbia Gas Transmission Corp.
Volume: 36.5 MMcf.

FERC Control Number: JD79–1580
API Well Number: 34–031–2–3207–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: James Bechtol #2
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 28 MMcf.

FERC Control Number: JD79–1581
API Well Number: 34–031–2–3196–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: James Bechtol #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corporation
Volume: 28 MMcf.

FERC Control Number: JD79–1582
API Well Number: 34–031–2–3310–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: Owen Brenly #1
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 28 MMcf.

FERC Control Number: JD79–1583
API Well Number: 34–031–2–3311–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: Owen Brenly #2
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 28 MMcf.

FERC Control Number: JD79–1584
API Well Number: 34–031–2–3294–**–14
Section of NGPA: 103
Operator: Kensington Limited Partnership
Well Name: James Bechton #3
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corporation
Volume: 28 MMcf.

FERC Control Number: JD79–1585
API Well Number: 34–073–2–2105–**–14
Section of NGPA: 103
Operator: Carl M. Poston
Well Name: Leon and Mabel Keiffer No. #1
Field:
County: Hocking
Purchaser:
Volume: 18 MMcf.

FERC Control Number: JD79–1586
API Well Number: 34–119–2–4074–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Gerald, Carl & Paul Lacy #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 18.5 MMcf.

FERC Control Number: JD79–1587
API Well Number: 34–119–2–4059–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: William and Mary Jennings #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1588
API Well Number: 34–119–2–4080–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Priest-Spease #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1589
API Well Number: 34–119–2–4326–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Ernest Lake #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1590
API Well Number: 34–119–2–4284–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: H. S. & Edwin V. Priest-Spease #1–A
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1591
API Well Number: 34–119–2–4073–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: William and Mary Jennings #2
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1592
API Well Number: 34–087–2–0247–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Thomas & Robert Vellville #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1593
API Well Number: 34–119–2–3230–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Wilbur & Annis Sauerbrey #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1594
API Well Number: 34–119–2–3231–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Carl & Anna Cochran #1
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1595
API Well Number: 34–087–2–0238–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Neal & Robert Taylor #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1596
API Well Number: 34–087–2–0236–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Neal & Robert Taylor #2
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1597
API Well Number: 34–087–2–0244–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Ronda & Arlene Shepherd #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1598
API Well Number: 34–087–2–0235–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Lucille Hill #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1599
API Well Number: 34–087–2–0243–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: James & Gary Miller #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1600
API Well Number: 34–087–2–0239–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Cecil & Clara Miller #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1601
API Well Number: 34–053–2–0221–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: J. Tim & Betty R. Evans #1
Field: N/A
County: Gallia
Purchaser: Gallipolis Reduction Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1602
API Well Number: 34–087–2–0249–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Charles Renfroe #2
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1603
API Well Number: 34–119–2–4072–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: William & Mary Jennings #3
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1604
API Well Number: 34–119–2–4313–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Gerald, Carl & Paul Lacy #2
Field: N/A
County: Muskingum
Purchaser: International Harvester Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1605
API Well Number: 34–087–2–0250–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Charles Renfroe #3
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19.5 MMcf.

FERC Control Number: JD79–1606
API Well Number: 34–053–2–0220–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Hannon & Oma Hager #1
Field: N/A
County: Gallia
Purchaser: Gallipolis Reduction Company
Volume: 19.5 MMcf.

FERC Control Number: JD79–1607
API Well Number: 34–127–2–4192–**–14
Section of NGPA: 103
Operator: Petro-Lewis Corporation
Well Name: Ruff #1, Victor
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 14.6 MMcf.

FERC Control Number: JD79–1608
API Well Number: 34–105–2–1757–**–14
Section of NGPA: 103
Operator: Thomas W. George
Well Name: Frank Herald Jr. #1
Field: N/A
County: Meigs
Purchaser: Not yet determined
Volume: 4.2 MMcf.

FERC Control Number: JD79–1609
API Well Number: 34–083–2–2534–**–14
Section of NGPA: 103
Operator: Berwell Energy Inc.
Well Name: Walter Cline No. 1
Field: N/A
County: Knox
Purchaser: Columbia Gas Transmission Company
Volume: 60 MMcf.

FERC Control Number: JD79–1610
API Well Number: 34–133–2–1772–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Haught Unit No. 4
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200,000 MMcf.

FERC Control Number: JD79–1613
API Well Number: 34–169–2–2090–14
Section of NGPA: 103
Operator: Royal Petroleum Properties
Well Name: Nussbaum #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79–1611

API Well Number: 34–089–2–3480–14
Section of NGPA: 103
Operator: Jonsu Corp..
Well Name: Booth-Meara #1
Field: N/A
County: Licking
Purchaser: N/A
Volume: 4 MMcf.

FERC Control Number: JD79–1612
API Well Number: 34–169–2–2091–14
Section of NGPA: 103
Operator: Royal Petroleum Properties
Well Name: Nussbaum #2
Field: N/A
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79–1614
API Well Number: 34–121–2–2084–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: H. D. Watson 3me
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79–1615
API Well Number: 34–059–2–2376–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Tennantime
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1616
API Well Number: 34–005–2–3171–14
Section of NGPA: 103
Operator: Hortin & Huffman
Well Name: D. & C. Davies #1
Field: N/A
County: Ashland
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1617
API Well Number: 34–115–2–1729–14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Ohio-Power-Roxie-Reed #2
Field: N/A
County: Morgan
Purchaser: The East Ohio Gas Company
Volume: 28 MMcf.

FERC Control Number: JD79–1618
API Well Number: 34–005–2–3142–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: Sadie S. Chesrown #1
Field: N/A
County: Ashland
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1619
API Well Number: 34–005–2–3147–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: Richard E. & Thelma J. Krebs #1
Field: N/A
County: Ashland
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1620
API Well Number: 34–121–2–2107–14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Itol-Reed-Ohio Power #2
Field: N/A
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 27 MMcf.

FERC Control Number: JD79–1621
API Well Number: 34–005–2–3153–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: John M. Leninger Jr. #1
Field: N/A
County: Ashland
Purchaser: Columbia Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1622
API Well Number: 34–157–2–2895–14
Section of NGPA: 103
Operator: Zenith Exploration Company
Well Name: Carl Armstrong #1
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Company
Volume: 1.2 MMcf.

FERC Control Number: JD79–1623
API Well Number: 34–031–2–3105–14
Section of NGPA: 103
Operator: Zenith Exploration Company
Well Name: Richard Bartolec #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.6 MMcf.

FERC Control Number: JD79–1624
API Well Number: 34–085–2–0229–14
Section of NGPA: 103
Operator: J. V. Spankard
Well Name: Bobby & Faye Compton #1
Field: N/A
County: Lake
Purchaser: East Ohio Gas Company
Volume: 21 MMcf.

FERC Control Number: JD79–1625
API Well Number: 34–085–2–0234–14
Section of NGPA: 103
Operator: J. V. Spankard
Well Name: P. E. Golding #1
Field: N/A
County: Lake
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1626
API Well Number: 34–085–2–0230–14
Section of NGPA: 103
Operator: J. V. Spakard
Well Name: Roy E. & Alice W. Ronke #1
Field: N/A
County: Lake
Purchaser: East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1627
API Well Number: 34–133–2–1403–14
Section of NGPA: 103
Operator: General Electric Company
Well Name: Huffman-Crane #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 44.5 MMcf.

FERC Control Number: JD79–1628
API Well Number: 34–133–2–1107–14
Section of NGPA: 103
Operator: General Electric Company
Well Name: Huffman #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 17 MMcf.

FERC Control Number: JD79–1629
API Well Number: 34–105–2–1708–14
Section of NGPA: 103
Operator: Adams Drilling Company
Well Name: Larry Thomas #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79–1630
API Well Number: 34–075–2–2080–14
Section of NGPA: 103
Operator: Hortin & Huffman
Well Name: Forrest Mutchler #1
Field: N/A
County: Ashland
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1631
API Well Number: 34–119–2–4260–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Fenton lme
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 30 MMcf.

FERC Control Number: JD79–1632
API Well Number: 34–157–2–3271–14
Section of NGPA: 103
Operator: Vescorp Industries, Inc.
Well Name: Landis #1
Field: N/A
County: Tuscarawas
Purchaser: N/A
Volume: 4,000 MMcf.

FERC Control Number: JD79–1633
API Well Number: 34–059–2–2343–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Weaver Shephard 1 me
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 8 MMcf.

FERC Control Number: JD79–1634
API Well Number: 34–059–2–2361–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Fogle 2me
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1636
API Well Number: 34–059–2–2036–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Homer-Chambers #1–MD
Field: N/A
County: Guernsey
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1637
API Well Number: 34–085–2–0233–14
Section of NGPA: 103
Operator: J. V. Spankard

Well Name: Carol A. & Ronald S. Mosher #1
Field: N/A
County: Lake
Purchaser: East Ohio Gas Company
Volume: 50 MMcf.

FERC Control Number: JD79–1638
API Well Number: 34–121–2–2074–14
Section of NGPA: 103
Operator: Green Gas Co.
Well Name: Ohio Power—J. B. Foraker #1
Field: N/A
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 2 MMcf.

FERC Control Number: JD79–1639
API Well Number: 34–121–2–2073–14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Cecil Cain #1
Field: N/A
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 2 MMcf.

FERC Control Number: JD79–1640
API Well Number: 34–155–2–0617–14
Section of NGPA: 103
Operator: Inland Drilling Co., Inc.
Well Name: Temple #8 #0617
Field: N/A
County: Trumbull
Purchaser: N/A
Volume: 6,684 MMcf.

FERC Control Number: JD79–1641
API Well Number: 34–053–2–0232–14
Section of NGPA: 103
Operator: R. Gene Brasel also dba Brasel & Brasel
Well Name: Dennis Lane #1
Field: N/A
County: Gallis
Purchaser: Columbia Gas Transmission Corporation
Volume: 4 MMcf.

FERC Control Number: JD79–1642
API Well Number: 34–053–2–0339–14
Section of NGPA: 103
Operator: R. Gene Brasel dba Brasel & Brasel
Well Name: Clark Hager #4
Field: N/A
County: Gallia
Purchaser: Columbus Gas Transmission Corp.
Volume: 18 MMcf.

FERC Control Number: JD79–1643
API Well Number: 34–053–2–0340–14
Section of NGPA: 103
Operator: R. Gene Brasel dba Brasel & Brasel
Well Name: Clark Hager #3
Field: N/A
County: Gallia
Purchaser: Columbus Gas Transmission Corp.
Volume: 18 MMcf.

FERC Control Number: JD79–1644
API Well Number: 34–053–2–0234–14
Section of NGPA: 103
Operator: R. Gene Brasel dba Brasel & Brasel
Well Name: Clark Hager #2
Field: N/A
County: Gallia
Purchaser: Columbus Gas Transmission Corp.
Volume: 18 MMcf.

FERC Control Number: JD79–1645
API Well Number: 34–157–2–2777–14
Section of NGPA: 103
Operator: Zenity Exploration Company
Well Name: Clyde L. Bennett #1
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Company
Volume: 45 MMcf.

FERC Control Number: JD79–1646
API Well Number: 34–005–2–3172–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: John Bender #1
Field: N/A
County: Ashland
Purchaser: Columbus Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1647
API Well Number: 34–005–2–3155–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: James Fisher #3
Field: N/A
County: Ashland
Purchaser: Columbus Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1648
API Well Number: 34–005–2–3173–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: John & Vita Leininger Sr. #2
Field: N/A
County: Ashland
Purchaser: Columbus Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1649
API Well Number: 34–005–2–3151–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: John & Vita Leininger Sr. #1
Field: N/A
County: Ashland
Purchaser: Columbus Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1650
API Well Number: 34–005–2–3144–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: Walter Stitzlein #1
Field: N/A
County: Ashland
Purchaser: Columbus Gas Transmission Corp.
Volume: 2 MMcf.

FERC Control Number: JD79–1651
API Well Number: 34–121–2–2087–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 45 ME
Field: N/A
County: Noble
Purchaser: East Ohio Gas Company
Volume: 5 MMcf.

FERC Control Number: JD79–1652
API Well Number: 34–089–2–3546–14
Section of NGPA: 103
Operator: Mid-Con Oil Company
Well Name: Whited Well #3
Field: N/A
County: Bowling Green Twp. Licking Co.
Purchaser: National Gas and Oil Co.
Volume: 8 MMcf.

FERC Control Number: JD79–1653
API Well Number: 34–119–2–4243–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 36 ME
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Company
Volume: 36 MMcf.

FERC Control Number: JD79–1654
API Well Number: 34–119–2–4242–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 34 ME
Field: N/A
County: Muskingum
Purchaser: Columbus Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1655
API Well Number: 34–059–2–2326–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Tobin-George-Hollingsworth #1 ME
Field: N/A
County: Guernsey
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1656
API Well Number: 34–059–2–2332–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Wolfe #1 ME
Field: N/A
County: Guernsey
Purchaser: Columbus Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1657
API Well Number: 34–059–2–2327–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Bennett #2 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1658
API Well Number: 34–059–2–2356–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Allen-Johnson
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1659
API Well Number: 34–059–2–2454–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Howald 1 ME
Field: N/A
County: Guernsey
Purchaser: East Ohio Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79–1660
API Well Number: 34–059–2–2449–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Johnson-Heirs 2 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1661
API Well Number: 34–059–2–2413–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation

Well Name: R. Mathers 1 ME
Field: N/A
County: Guernsey
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1662
API Well Number: 34–119–2–4235–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 37 ME
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Company
Volume: 30 MMcf.

FERC Control Number: JD79–1663
API Well Number: 34–121–2–2082–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 41 ME
Field: N/A
County: Noble
Purchaser: East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1664
API Well Number: 34–059–2–2384
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Sarchet-Slason 1 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1665
API Well Number: 34–119–2–4403–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Ohio Power 43 ME
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Company
Volume: 1 MMcf.

FERC Control Number: JD79–1666
API Well Number: 34–121–2–2079–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Wheeler 1 ME
Field: N/A
County: Noble
Purchaser: East Ohio Gas Company
Volume: 1 MMcf.

FERC Control Number: JD79–1667
API Well Number: 34–119–2–4313–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Tenton 2 ME
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 35 MMcf.

FERC Control Number: JD79–1668
API Well Number: 34–059–2–2507
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Pilck-Shrover 2 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1669
API Well Number: 34–121–2–2057–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: W. Watson 1 ME
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–1670
API Well Number: 34–121–2–2058–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: McWilliams 1 Me
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–1671
API Well Number: 34–059–2–2339–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Pilck Shriver 1 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1672
API Well Number: 34–059–2–2341–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Sherby 1 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79–1673
API Well Number: 34–121–2–2056–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: W. Watson 2 ME
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission Corporation
Volume: 5 MMcf.

FERC Control Number: JD79–1674
API Well Number: 34–059–2–2383–14
Section of NGPA: 103
Operator: Guernsey Petroleum Corporation
Well Name: Haschak 1 ME
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corporation
Volume: 1 MMcf.

FERC Control Number: JD79–1675
API Well Number: 34–153–2–0641–14
Section of NGPA: 103
Operator: The Goodyear Tire & Rubber Company
Well Name: Norris-Wolfe #1
Field: N/A
County: Summit
Purchaser: East Ohio Gas Company
Volume: 35 MMcf.

FERC Control Number: JD79–1676
API Well Number: 34–133–2–1471–14
Section of NGPA: 103
Operator: Champion Petroleum Company
Well Name: Welker Unit #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 18.25 MMcf.

FERC Control Number: JD79–1677
API Well Number: 34–133–2–1487–14
Section of NGPA: 103
Operator: Champion Petroleum Company
Well Name: #2 House Unit
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 18.25 MMcf.

FERC Control Number: JD79–1678
API Well Number: 34–133–2–1486–14
Section of NGPA: 103
Operator: Champion Petroleum Company
Well Name: #1 House Unit
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 18.25 MMcf.

FERC Control Number: JD79–1679
API Well Number: 34–031–2–2857–14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Roy K. Gross #1
Field: Warsaw
County: Coshocton
Purchaser: Columbia Gas Transmission
Volume: 17 MMcf.

FERC Control Number: JD79–1680
API Well Number: 34–105–2–1702–14
Section of NGPA: 103
Operator: R. Gene Brasel dba Brasel & Brasel
Well Name: Floyd Carson #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 8 MMcf.

FERC Control Number: JD79–1681
API Well Number: 34–053–2–0233–14
Section of NGPA: 103
Operator: R Gene Brasel dba Brasel & Brasel
Well Name: Clark Hager #1
Field: N/A
County: Gallis
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1682
API Well Number: 34–053–2–0290–14
Section of NGPA: 103
Operator: R. Gene Brasel dba Brasel & Brasel
Well Name: Ray Hughes #7
Field: N/A
County: Gallia
Purchaser: Columbia Gas Transmission Corp.
Volume: 4.2 MMcf.

FERC Control Number: JD79–1683
API Well Number: 34–073–2–2112–14
Section of NGPA: 103
Operator: Collins-McGregor Operating Company
Well Name: James & Eugene Frey #2
Field:
County: Hocking County
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79–1684
API Well Number: 34–073–2–2038–14
Section of NGPA: 103
Operator: Collins-McGregor Operating Company
Well Name: Roland Crace #3
Field:
County: Hocking County
Purchaser:
Volume: 5.475 MMcf.

FERC Control Number: JD79–1685
API Well Number: 34–009–2–1837–14

Section of NGPA: 103
Operator: Carl E. Smith, Inc.
Well Name: Lowell Guthrie #1
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.6 MMcf.

FERC Control Number: JD79–1686
API Well Number: 34–105–2–1700–14
Section of NGPA: 103
Operator: Carl E. Smith, Inc.
Well Name: Winifred Marcinko #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Transmission Corp.
Volume: 24 MMcf.

FERC Control Number: JD79–1687
API Well Number: 34–009–2–1835–14
Section of NGPA: 103
Operator: Carl E. Smith, Inc.
Well Name: George Q. Guthrie #1
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 14.6 MMcf.

FERC Control Number: JD79–1688
API Well Number: 34–127–2–2099–14
Section of NGPA: 103
Operator: W. E. Shrider Co.
Well Name: Peabody Lewis #1
Field: N/A
County: Perry
Purchaser: Foraker Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79–1689
API Well Number: 34–167–2–4293–14
Section of NGPA: 103
Operator: Quaker State Oil Refining Corp.
Well Name: Haessly Lumber #1
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 81.76 MMcf.

FERC Control Number: JD79–1690
API Well Number: 34–075–2–1990–14
Section of NGPA: 103
Operator: "A" Producing Company
Well Name: Cathryn Foreman Well #1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–1691
API Well Number: 34–075–2–2005–14
Section of NGPA: 103
Operator: "A" Producing Company
Well Name: Cathryn Foreman Well #3
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–1692
API Well Number: 34–167–2–3824–14
Section of NGPA: 103
Operator: "A" Producing Company
Well Name: John Masters Well #1
Field: N/A
County: Washington
Purchaser: The River Gas Company
Volume: 5 MMcf.

FERC Control Number: JD79–1693
API Well Number: 34–099–2–1155–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: Ralph Malmsberry #1
Field: N/A
County: Mahoning
Purchaser: The East Ohio Gas Company
Volume: 31 MMcf.

FERC Control Number: JD79–1635
API Well Number: 34–087–2–0237–**–14
Section of NGPA: 103
Operator: Southern Ohio Energy Company
Well Name: Charles Renfroe #1
Field: N/A
County: Lawrence
Purchaser: Columbia Gas of Ohio
Volume: 19½ 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, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 175.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.
[FR Doc. 79–11079 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 2, 1979.

On March 21, 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.

Ohio Department of Natural Resources Division of Oil and Gas

FERC Control Number: JD79–1441
API Well Number: 34–119–2–4460–**–14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: John Marling #1
Field: N/A
County:
Purchaser: Not yet determined
Volume: 9.0 MMcf.

FERC Control Number: JD79–1142
API Well Number: 34–103–2–1957–**–14
Section of NGPA: 103
Operator: H. Leslie Bowes
Well Name: Bowes #1
Field: Not applicable
County: Medina
Purchaser: Not yet determined
Volume: 9 MMcf.

FERC Control Number: JD79–1443
API Well Number: 34–103–2–1963–**–14
Section of NGPA: 103
Operator: H. Leslie Bowes
Well Name: Bowes #2
Field: Not applicable
County: Medina
Purchaser: Not yet determined
Volume: 9 MMcf.

FERC Control Number: JD79–1444
API Well Number: 34–089–2–3539–**–14
Section of NGPA: 103
Operator: H & D Drilling Co., Inc.
Well Name: Mitchell Bell #1
Field: N/A
County: Licking
Purchaser: National Gas & Oil Corporation
Volume: 10 MMcf.

FERC Control Number: JD79–1145
API Well Number: 34–115–2–1712—**–14
Section of NGPA: 103
Operator: Minuteman Exploration Company
Well Name: Roberts #1
Field: Not applicable
County: Morgan
Purchaser: East Ohio Gas Company
Volume: 9.125 MMcf.

FERC Control Number: JD79–1446
API Well Number: 34–115–2–1716–**–14
Section of NGPA: 103
Operator: Minuteman Exploration company
Well Name: Mautz #1
Field: Not applicable
County: Morgan
Purchaser: East Ohio Gas Company
Volume: 27.375 MMcf.

FERC Control Number: JD79–1147
API Well Number: 34–115–2–1717–**–14
Section of NGPA: 103
Operator: Minuteman Exploration Company
Well Name: Williams #1
Field: Not applicable
County: Morgan
Purchaser: East Ohio Gas Company
Volume: 7.665 MMcf.

FERC Control Number: JD79–1448
API Well Number: 34–115–2–1725–**–14
Section of NGPA: 103
Operator: Minuteman Exploration Company
Well Name: Cordray #1A
Field: Not applicable
County: Morgan
Purchaser: East Ohio Gas Company
Volume: 12.410 MMcf.

FERC Control Number: JD79–1449
API Well Number: 34–115–2–1724–**–14
Section of NGPA: 103
Operator: Minuteman Exploration Company
Well Name: D. Ross #1A
Field: Not applicable
County: Morgan
Purchaser: East Ohio Bas Company
Volume: 2.190 MMcf.

FERC Control Number: JD79–1450
API Well Number: 34–121–2–1984–**–14
Section of NGPA: 103
Operator: Tiger Oil, Inc.
Well Name: Harley Sailing #1
Field: N/A
County: Noble

Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1451
API Well Number: 34–119–2–4429–**–14
Section of NGPA: 103
Operator: Victor McKenzie
Well Name: M. Jane Friel #1
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 25 MMcf.

FERC Control Number: JD79–1452
API Well Number: 34–035–2–0910–**–14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Brookins #1
Field: N/A
County: Cuyahoga
Purchaser: Columbia Gas of Ohio
Volume: 6 MMcf.

FERC Control Number: JD79–1453
API Well Number: 34–089–2–3545–**–14
Section of NGPA: 103
Operator: Hortin and Huffman
Well Name: Canfield #1
Field: N/A
County: Licking
Purchaser: National Gas and Oil Corp.
Volume: 6,451.5 MMcf.

FERC Control Number: JD79–1454
API Well Number: 34–119–2–4557–**–14
Section of NGPA: 103
Operator: Leader Equities, Inc.
Well Name: Garbas #1
Field: N/A
County: Muskingum
Purchaser: National Petroleum Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1455
API Well Number: 34–099–2–0795–**–14
Section of NGPA: 103
Operator: Lomak Petroleum Incorporated
Well Name: Myers #3
Field: N/A
County: Mahoning
Purchaser: East Ohio Gas Company
Volume: 36 MMcf.

FERC Control Number: JD79–1456
API Well Number: 34–099–2–0802–**–14
Section of NGPA: 103
Operator: Lomak Petroleum Incorporated
Well Name: Myers #2
Field: N/A
County: Mahoning
Purchaser: East Ohio Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79–1457
API Well Number: 34–133–2–1435–**–14
Section of NGPA: 103
Operator: The Carter-Jones Lumber Company
Well Name: Karg Unit #2
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1458
API Well Number: 34–133–2–1436–**–14
Section of NGPA: 103
Operator: The Carter-Jones Lumber Company
Well Name: Karg Unit #1
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1459
API Well Number: 34–127–2–4200–**–14
Section of NGPA: 103
Operator: Pa-Tex Inc.
Well Name: Jack L. Treadway #1
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 36 MMcf.

FERC Control Number: JD79–1460
API Well Number: 34–127–2–4167–**–14
Section of NGPA: 103
Operator: Pa-Tex Inc.
Well Name: Jack L. Treadway #2
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 36 MMcf.

FERC Control Number: JD79–1461
API Well Number: 34–127–2–4170–**–14
Section of NGPA: 103
Operator: Pa-Tex Inc.
Well Name: Ruth S. Watts #2
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 36 MMcf.

FERC Control Number: JD79–1462
API Well Number: 34–127–2–4169–**–14
Section of NGPA: 103
Operator: Pa-Tex Inc.
Well Name: Ruth Watts #1
Field: N/A
County: Perry
Purchaser: Not yet determined
Volume: 36 MMcf.

FERC Control Number: JD79–1463
API Well Number: 34–075–2–2020–**–14
Section of NGPA: 103
Operator: Jadoil, Inc.
Well Name: Amos & Amanda Yoder #1
Field: N/A
County: Holmes
Purchaser: The East Ohio Gas Company
Volume: 45 MMcf.

FERC Control Number: JD79–1464
API Well Number: 34–019–2–1222–**–14
Section of NGPA: 103
Operator: The Carter-Jones Lumber Company
Well Name: Max Moore #2
Field: N/A
County: Carroll
Purchaser: Not yet determined
Volume: 15 MMcf.

FERC Control Number: JD79–1464
API Well Number: 34–119–2–4395–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: Paul Miller #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1466
API Well Number: 24–119–2–4480–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: Clarence Porter #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1467
API Well Number: 34–119–2–4384–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: Alpine Farms 2–A
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1468
API Well Number: 34–031–2–3281–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: A. E. Crowthers #4
Field: N/A
County: Coshocton
Purchaser: Not yet determined
Volume: 6.0 MMcf.

FERC Control Number: JD79–1469
API Well Number: 34–119–2–4252–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: William Kimberlin #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1470
API Well Number: 34–119–2–4383–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: L. McCutcheon #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1471
API Well Number: 34–083–2–2373–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: Dwight Payne #4
Field: N/A
County: Knox
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1472
API Well Number: 34–083–2–2372–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: Dwight Payne #5
Field: N/A
County: Knox
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1473
API Well Number: 34–083–2–2388–**–14
Section of NGPA: 103
Operator: The Oxford Oil Co.
Well Name: I . H. Colopy #2
Field: N/A
County: Knox
Purchaser: Not yet determined
Volume: 10.0 MMcf.

FERC Control Number: JD79–1474
API Well Number: 34–119–2–3972–**–14
Section of NGPA: 103
Operator: Oxford Oil Co.
Well Name: E. D. Mann #6
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 9.0 MMcf.

FERC Control Number: JD79–1475

API Well Number: 34–009–2–1816–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. #26R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1476
API Well Number: 34–073–2–2097–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. #40R
Field: N/A
County: Hocking
Purchaser: Columbia Gas Transmission Corp
Volume: 15 MMcf.

FERC Control Number: JD79–1477
API Well Number: 34–073–2–2085–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. #37R
Field: N/A
County: Hocking
Purchaser: Columbia Gas Transmission Corp
Volume: 15 MMcf.

FERC Control Number: JD79–1478
API Well Number: 34–127–2–4183–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Foster Heavener #1
Field: N/A
County: Perry
Purchaser: Columbia Gas Transmission Corp
Volume: 20 MMcf.

FERC Control Number: JD79–1479
API Well Number: 34–119–2–4436–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: George & Verne Tom #1
Field: N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1480
API Well Number: 34–007–2–0929–**–14
Section of NGPA: 103
Operator: Clarence K. Tussell, Jr.
Well Name: E. & S. Harcs #1
Field: N/A
County: Ashtabula
Purchaser: East Ohio Gas Co.
Volume: 24 MMcf.

FERC Control Number: JD79–1481
API Well Number: 34–031–2–3366–*–14
Section of NGPA: 103
Operator: Derrick Petroleum Co.
Well Name: Charles Walczak #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp
Volume: 10 MMcf.

FERC Control Number: JD79–1482
API Well Number: 34–083–2–2536–**–14
Section of NGPA: 103
Operator: Derrick Petroleum Co.
Well Name: Don Garrett #1
Field: N/A
County: Knox
Purchaser: Columbia Gas Transmission Corp
Volume: 16 MMcf.

FERC Control Number: JD79–1483
API Well Number: 34–043–2–0295–**–14
Section of NGPA: 103
Operator: Gromley & Johnson
Well Name: Walter Rife #1
Field: N/A
County: Gallia
Purchaser: Not yet determined
Volume: 4.3 MMcf.

FERC Control Number: JD79–1484
API Well Number: 34–031–2–3314–**–14
Section of NGPA: 103
Operator: Derrick Petroleum Co.
Well Name: Luthor Hothem #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp
Volume: 15 MMcf.

FERC Control Number: JD79–1485
API Well Number: 34–103–2–1971–**–14
Section of NGPA: 103
Operator: Smith, Shafer, Smith (A Partnership)
Well Name: Namoshe #1
Field: N/A
County: Medina
Purchaser: Columbia Gas Transmission Corp
Volume: 27.375 MMcf.

FERC Control Number: JD79–1486
API Well Number: 34–119–2–4427–**–14
Section of NGPA: 103
Operator: National Production Corporation
Well Name: Elmer Holbein #2
Field: N/A
County: Muskingum
Purchaser: National Gas & Oil Corporation
Volume: 15 MMcf.

FERC Control Number: JD79–1487
API Well Number: 34–031–2–3055–**–14
Section of NGPA: 103
Operator: National Production Corporation
Well Name: Sheldon A. Taft #1
Field: N/A
County: Oshocton
Purchaser: National Gas & Oil Corporation
Volume: 15 MMcf.

FERC Control Number: JD79–1488
API Well Number: 34–119–2–4401–**–14
Section of NGPA: 103
Operator: National Production Corporation
Well Name: Elmer Holbein #1
Field: N/A
County: Muskingum
Purchaser: National Gas & Oil Corporation
Volume: 18 MMcf.

FERC Control Number: JD79–1489
API Well Number: 34–103–2–2027–**–14
Section of NGPA: 103
Operator: Smith, Shafer, Smith (A Partnership)
Well Name: Namoske #2
Field: N/A
County: Medina
Purchaser: Columbia Gas Transmission Corp.
Volume: 27.375 MMcf.

FERC Control Number: JD79–1490
API Well Number: 34–119–2–4275–**–14
Section of NGPA: 103
Operator: Cameron Bros.
Well Name: Cameron Bros. #1
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 5.0 MMcf.

FERC Control Number: JD79–1491
API Well Number: 34–119–2–4327–**–14
Section of NGPA: 103
Operator: Cameron Bros.
Well Name: Robert Merry #2
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 8.0 MMcf.

FERC Control Number: JD79–1492
API Well Number: 34–119–2–4214–**–14
Section of NGPA: 103
Operator: Cameron Bros.
Well Name: King Quarries #2
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 7.0 MMcf.

FERC Control Number: JD79–1493
API Well Number: 34–105–2–0348–**–14
Section of NGPA: 103
Operator: Cameron & Kincaid
Well Name: Pearl Edwards #3
Field: N/A
County: Meigs
Purchaser: Not yet determined
Volume: 3.0 MMcf.

FERC Control Number: JD79–1494
API Well Number: 34–105–2–0347–**–14
Section of NGPA: 103
Operator: Cameron & Kincaid
Well Name: Pearl Edwards #4
Field: N/A
County: Meigs
Purchaser: Not yet determined
Volume: 4.0 MMcf.

FERC Control Number: JD79–1495
API Well Number: 34–007–2–0843–**–14
Section of NGPA: 103
Operator: Four City Producing
Well Name: Smith 1 843
Field: N/A
County: Ashtabula
Purchaser: East Ohio Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79–1496
API Well Number: 34–007–2–0896–**–14
Section of NGPA: 103
Operator: Four City Producing
Well Name: Tkacz I 896
Field: N/A
County: Ashtabula
Purchaser: East Ohio Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79–1497
API Well Number: 34–151–2–2852–**–14
Section of NGPA: 103
Operator: Fullco, Inc.
Well Name: Slabach #1
Field: N/A
County: Stark
Purchaser: Not yet determined
Volume: 20 MMcf.

FERC Control Number: JD79–1498
API Well Number: 34–151–2–2853–**–14
Section of NGPA: 103
Operator: Fullco, Inc.
Well Name: Hartville Mennonite Church #1
Field: N/A
County: Stark
Purchaser: Not yet determined
Volume: 20 MMcf.

FERC Control Number: JD79–1499
API Well Number: 34–031–2–3304–**–14

Section of NGPA: 103
Operator: Frank W. Hoover Prod.
Well Name: Mary A. Broup #1
Field: N/A
County: Coshocton
Purchaser: Columbus Gas Transmission Corp.
Volume: 4 MMcf.

FERC Control Number: JD79–1500
API Well Number: 34–111–21–1883–**–14
Section of NGPA: 103
Operator: Carl E. Smith, Inc.
Well Name: David Earley #1
Field: N/A
County: Monroe
Purchaser: River Gas Co.
Volume: 7.3 MMcf.

FERC Control Number: JD79–1501
API Well Number: 34–007–2–0879–**–14
Section of NGPA: 103
Operator: Chanse Petroleum Corporation
Well Name: S. Brockway #2
Field: N/A
County: Ashtabula
Purchaser: The East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1502
API Well Number: 34–151–2–2766–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: H. A. Muskopt #1
Field: N/A
County: Stark
Purchaser: Columbia Gas Transmission Corp.
Volume: 20 MMcf.

FERC Control Number: JD79–1503
API Well Number: 34–007–2–0963–**–14
Section of NGPA: 103
Operator: Chanse Petroleum Corporation
Well Name: H. & A. Smith #2
Field: N/A
County: Ashtabula
Purchaser: The East Ohio Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79–1504
API Well Number: 34–119–2–4455–**–14
Section of NGPA: 103
Operator: Unitex Limited
Well Name: Coulson #2
Field: N/A
County: Muskingum
Purchaser: Not yet determined
Volume: 35 MMcf.

FERC Control Number: JD79–1505
API Well Number: 34–133–2–1773–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Haught Unit No. 5
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200,000 MMcf.

FERC Control Number: JD79–1506
API Well Number: 34–133–2–1714–**–14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Haught Unit No. 1
Field: N/A
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1,200,000 MMcf.

FERC Control Number: JD79–1507
API Well Number: 34–009–2–1848–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. #29R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–1508
API Well Number: 34–045–2–0597–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Ray Williams #1
Field: N/A
County: Fairfield
Purchaser: Columbia Gas Transmission Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–1509
API Well Number: 34–009–2–1855–**–14
Section of NGPA: 103
Operator: Reliance Management Co.
Well Name: Sunday Creek Coal Co. #33R
Field: N/A
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume:

FERC Control Number: JD79–1510
API Well Number: 34–007–2–0944–**–14
Section of NGPA: 103
Operator: Clarence K. Tussel, Jr.
Well Name: D. Blenman #1
Field: N/A
County: Ashtabula
Purchaser: East Ohio Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79–1511
API Well Number: 34–083–2–2546–**–14
Section of NGPA: 103
Operator: Berwell Energy, Inc.
Well Name: Floyd Mickley No. 1
Field: N/A
County: Knox
Purchaser: Ohio Cumberland Gas Company
Volume: 72 MMcf.

FERC Control Number: JD79–1512
API Well Number: 34–105–2–1071–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Orland Gilland #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Trans. Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–1513
API Well Number: 34–105–2–1747–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Kenneth Frecker #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Trans. Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1514
API Well Number: 34–105–2–1770–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Kenneth Hager #1
Field: N/A
County: Meigs
Purchaser: Not yet determined
Volume: 15 MMcf.

FERC Control Number: JD79–1515
API Well Number: 34–105–2–1734–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Garland Caldwell #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Trans. Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1516
API Well Number: 34–105–2–1734–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Howard & Rubal Caldwell #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Trans. Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1517
API Well Number: 34–105–2–1732–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Cecil Caldwell #1
Field: N/A
County: Meigs
Purchaser: Columbia Gas Trans. Corp.
Volume: 10 MMcf.

FERC Control Number: JD79–1518
API Well Number: 34–167–2–3959–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Sandra Vanoster #1
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 12 MMcf.

FERC Control Number: JD79–1519
API Well Number: 34–167–2–3918–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Raymond Tornes #1
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 12 MMcf.

FERC Control Number: JD79–1520
API Well Number: 34–127–2–4245–**–14
Section of NGPA: 103
Operator: Jerry C. Olds
Well Name: Edward Warabow #1
Field: N/A
County: Perry
Purchaser: National Gas & Oil Corporation
Volume: 5 MMcf.

FERC Control Number: JD79–1521
API Well Number: 34–167–2–3919–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: 103
Field: Howard Dyar #1
County: N/A
Purchaser: Washington
Volume:

FERC Control Number: JD79–1522
API Well Number: 34–167–2–3960–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Howard Lang #1
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 12 MMcf.

FERC Control Number: JD79–1523
API Well Number: 34–167–2–4237–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: John & Janice Hughes #1

Field: N/A
County: Washington
Purchaser: Not yet determined
Volume:

FERC Control Number: JD79–1524
API Well Number: 34–167–2–4227–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Blaine & Lydia Hall #2
Field: N/A
County: Washington
Purchaser: Not yet determined
Volume:

FERC Control Number: JD79–1525
API Well Number: 34–167–2–3974–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Blaine & Lydia Hall #1
Field: N/A
County: Washington
Purchaser: Not yet determined
Volume: 12 MMcf.

FERC Control Number: JD79–1526
API Well Number: 34–151–2–2763–**–14
Section of NGPA: 103
Operator: DLM Gas & Oil Company
Well Name: Oberlin #1
Field: N/A
County: Stark
Purchaser: East Ohio Gas Company
Volume: 9 MMcf.

FERC Control Number: JD79–1527
API Well Number: 34–167–2–3744–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: David Kanett #1A
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–1528
API Well Number: 34–167–2–3754–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: David Kanett #1B
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–1529
API Well Number: 34–167–2–3799–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Eugene & Hazel Lane #1
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–1530
API Well Number: 34–167–2–3903–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: Eugene & Hazel Lane #2
Field: N/A
County: Washington
Purchaser: River Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–1531
API Well Number: 34–167–2–3779–**–14
Section of NGPA: 103
Operator: Liberty Oil & Gas Corp.
Well Name: David Kanett 1C
Field: N/A
County: Washington
Purchaser: Columbia Gas Trans. Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–1532
API Well Number: 34–151–2–2731–**–14
Section of NGPA: 103
Operator: DLM Gas & Oil Co.
Well Name: Swift #1
Field: N/A
County: Stark
Purchaser: East Ohio Gas Company
Volume: 10 MMcf.

FERC Control Number: JD79–1533
API Well Number: 34–151–2–2732–**–14
Section of NGPA: 103
Operator: DLM Gas & Oil Co.
Well Name: Thouvenin #1
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 26 MMcf.

FERC Control Number: JD79–1534
API Well Number: 34–127–2–4104–**–14
Section of NGPA: 103
Operator: The Midwest Oil and Gas Co.
Well Name: Kathryn Smith #1
Field: N/A
County: Perry
Purchaser: Columbia Gas Transmission Corp.
Volume: 2.5 MMcf.

FERC Control Number: JD79–1535
API Well Number: 34–127–2–4164–**–14
Section of NGPA: 103
Operator: The Midwest Oil and Gas Co.
Well Name: Carl Henning #1
Field: N/A
County: Perry
Purchaser: Columbia Gas Transmission Corp.
Volume: 13 MMcf.

FERC Control Number: JD79–1536
API Well Number: 34–151–2–2938–**–14
Section of NGPA: 103
Operator: Vescorp Industries, Inc.
Well Name: Scott #1
Field: N/A
County: Stark
Purchaser: Not yet determined
Volume: 200 MMcf.

FERC Control Number: JD79–1537
API Well Number: 34–133–2–1711–**–14
Section of NGPA: 103
Operator: Jud Noble and Associates, Inc.
Well Name: C. A. Preston #1
Field: N/A
County: Portage
Purchaser: East Ohio Gas Company
Volume: 30 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 within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.
[FR Doc. 79–11080 Filed 4–9–79; 8:45 am]
BILLING CODE 6450–01–M

Determination By a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

March 29, 1979.

On March 22, 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.

State of Louisiana Department of Natural Resources Office of Conservation

FERC Control Number: JD79–1105
API Well Number: 17–111–02187
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans. Corp. #1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 3.7 MMcf.

FERC Control Number: JD79–1106
API Well Number: 17–111–02188
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans. Corp. #2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79–1107
API Well Number: 17–111–00213
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: La. Gas Lands #12
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana
Volume: 3.3 MMcf.

FERC Control Number: JD79–1108
API Well Number: 17–111–01152
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: La. Gas Lands #13
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 17.0 MMcf.

FERC Control Number: JD79–1109
API Well Number: 17–111–02242
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans. Corp. #16
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79–1110

API Well Number: 17–061–20160
Section NGPA: 102
Operator: Henry Goodrich d/b/a Goodrich Oil Company
Well Name: 6500' RC SUA—McCain et al #1
Field: Choudrant
County: Lincoln
Purchaser: Texas Eastern Transmission Corporation
Volume: 584 MMcf.

FERC Control Number: JD79–1111
API Well Number: 17–015–015590000
Section NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Jeter No. A–2
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 8 MMcf.

FERC Control Number: JD79—1112
API Well Number: 17–015–01555000
Section NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Kerr No. B–3
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 8 MMcf.

FERC Control Number: JD79–1113
API Well Number: 17–015–20107
Section NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Skannal No. C–4
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 1 MMcf.

FERC Control Number: JD79–1114
API Well Number: 17–015–015600000
Section NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Jeter No. A–1
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 12 MMcf.

FERC Control Number: JD79–1115
API Well Number: 17–111–02168
Section NGPA: 108
Operator: IMC Exploration Company
Well Name: Etta S. Rabun #20
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79–1116
API Well Number: 17–111–02524
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Rabun-Potts #1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana
Volume: 3.7 MMcf.

FERC Control Number: JD79–1117
API Well Number: 17–015–014110000
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Murff No. C–1
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 7 MMcf.

FERC Control Number: JD79–1118
API Well Number: 17–015–01411000
Section of NGPA: 108
Operator: Pennzoil Producing company
Well Name: Murff N. C–1–D
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 10 MMcf.

FERC Control Number: JD79–1119
API Well Number: 17–015–016190000
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Webb No. A–1–D
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 1 MMcf.

FERC Control Number: JD79–1120
API Well Number: 17–015–013620000
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name: Murff No. B–2
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 14 MMcf.

FERC Control Number: JD79–1121
API Well Number: 17–113–20791
Section of NGPA: 102
Operator: The Stone Oil Corporation
Well Name: Exxon Fee No. 8 158930
Field: LaBlanc
County: Vermilion
Purchaser: Tennessee Gas Pipeline Company
Volume: 2920 MMcf.

FERC Control Number: JD79–1122
API Well Number: 17–111–01057
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Williamson et al. #2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79–1123
API Well Number: 17–111–01027
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Williamson #3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.5 MMcf.

FERC Control Number: JD79–1124
API Well Number: 17–111–01056
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Williamson et al. #4
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–1125
API Well Number: N/A
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79–1126
API Well Number: N/A
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Gibbs #3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79–1127
API Well Number: 17–111–00550
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Frost Lbr. #B–2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79–1128
API Well Number: 17–111–00551
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Frost Lbr. #B–1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 4.5 MMcf.

FERC Control Number: JD79–1129
API Well Number: 17–111–00400
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Frost Lbr. Inc. #6
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79–1130
API Well Number: 17–073–21107
Section of NGPA: 103
Operator: Lock Arbor Production Co.
Well Name: Smith et al #3
Field: Monroe Gas
County: Ouachita
Purchaser: United Gas Pipe Line Company
Volume: 15 MMcf.

FERC Control Number: JD79–1131
API Well Number: 17–073–21108
Section of NGPA: 108
Operator: Lock Arbor Production Co.
Well Name: Smith et al #4
Field: Monroe Gas
County: Ouachita
Purchaser: United Gas Pipe Line Company
Volume: 15 MMcf.

FERC Control Number: JD79–1132
API Well Number: 17–073–21109
Section of NGPA: 103
Operator: Lock Arbor Production Co.
Well Name: Smith et al #5
Field: Monroe Gas
County: Ouachita
Purchaser: United Gas Pipe Line Company
Volume: 15 MMcf.

FERC Control Number: JD79–1133
API Well Number: 17–073–00177
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Prod. #4–A
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 3.7 MMcf.

FERC Control Number: JD79–1134
API Well Number: 17–073–00155

Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Prod. #5–A
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79–1135
API Well Number: 17–073–00157
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Prod. #6–A
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana
Volume: 2.9 MMcf.

FERC Control Number: JD79–1136
API Well Number: 17–073–00158
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Union Prod. #7–A
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–1137
API Well Number: N/A
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name: VU D, Section 25 No. 1–D
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 1 MMcf.

FERC Control Number: JD79–1138
API Well Number: 17–067–20093
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #5—#121294
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 5.1 MMcf.

FERC Control Number: JD79–1139
API Well Number: 17–067–20051
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #4—#120857
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 3.7 MMcf.

FERC Control Number: JD79–1140
API Well Number: 17–067–20050
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #3—#120856
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 9.9 MMcf.

FERC Control Number: JD79–1141
API Well Number: 17–067–20048
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #2—#120792
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 4.7 MMcf.

FERC Control Number: JD79–1142
API Well Number: N/A
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name VU A, Skannal No. A–1
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 4 MMcf.

FERC Control Number: JD79–1143
API Well Number: 17–067–00178
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Kenyon-Spyker #2—#108033
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 2.2 MMcf.

FERC Control Number: JD79–1144
API Well Number: 17–067–00142
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Kenyon-Spyker #1—#106680
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 2.6 MMcf.

FERC Control Number: JD79–1145
API Well Number: 17–067–20111
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #16—#123432
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 5.5 MMcf.

FERC Control Number: JD79–1146
API Well Number: 17–067–20115
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #15—#124433
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 4.0 MMcf.

FERC Control Number: JD79–1147
API Well Number: 17–067–20114
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #12—#124267
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas
Volume: 9.1 MMcf.

FERC Control Number: JD79–1148
API Well Number: 17–069–20096
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear—Spyker #8—#121422
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas Company
Volume: 3.7 MMcf.

FERC Control Number: JD79–1149
API Well Number: 17–067–20095
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #7—121296
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79–1150
API Well Number: 17–067–20094
Section of NGPA: 108
Operator: ENERCO Exploration & Management Co.
Well Name: Spear-Spyker #6—#121295
Field: Monroe
County: Morehouse
Purchaser: Southern Natural Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–1151
API Well Number: 17–017–227030000
Section of NGPA: 103
Operator: Bayou Production Comany
Well Name: Abney B #1 Ser. No. 160829
Field: Greenwood-Waskom
County: Caddo
Purchaser: Negotiating Contract
Volume: 150 MMcf.

FERC Control Number: JD79–1152
API Well Number: 17–061–00397000
Section of NGPA: 108
Operator: Murphy Oil Corporation
Well Name: Hoss L SUE; West No. 1—T (Serial No. 48884)
Field: Simsboro
County: Lincoln
Purchaser: Arkansas Louisiana Gas Company
Volume: 16,000 MMcf.

FERC Control Number: JD79–1153
API Well Number: 17–111–21278
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ford #10
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79–1154
API Well Number: 17–111–01247
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ford #7
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79–1155
API Well Number: N/A
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ford #3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79–1156
API Well Number: N/A
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Ford #2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79–1157
API Well Number: N/A
Section of NGPA: 108

Operator: IMC Exploration Company
Well Name: Ford #1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–1158
API Well Number: 17–073–20077
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Fairbanks R.E. No. F–77
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 10.8 MMcf.

FERC Control Number: JD79–1159
API Well Number: 17–073–20075
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Fairbanks R.E. No. F–76
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 2.8 MMcf.

FERC Control Number: JD79–1160
API Well Number: 17–073–20074
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Fairbanks R.E. No. F–75
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79–1161
API Well Number: 17–015–013870000
Section of NGPA: 108
Operator: Pennzoil Producing Company
Well Name: VU E, Section 30 No. 1–D
Field: Sligo
County: Bossier
Purchaser: United Gas Pipe Line Company
Volume: 9 MMcf.

FERC Control Number: JD79–1162
API Well Number: 17–027–02164
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Fairbanks R.E. No. 36
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 2.7 MMcf.

FERC Control Number: JD79–1163
API Well Number: 17–101–20993
Section of NGPA: 107 & 103
Operator: Southern Natural Gas Company
Well Name: PADd–4a RB SUA; SNG Fee No. 2
Field: Patterson
County: St. Mary
Purchaser: Southern Natural Gas Company
Volume: 1,410 MMcf.

FERC Control Number: JD79–1164
API Well Number: 17–111–02171
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Etta S. Rabin No. 8
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.8 MMcf.

FERC Control Number: JD79–1165
API Well Number: 17–111–02172
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Etta S. Rabun No. #7
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.1 MMcf.

FERC Control Number: JD79–1166
API Well Number: 17–111–02367
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Rabun No. 14
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79–1167
API Well Number: 17–111–02494
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Rabun No. 1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 2.6 MMcf.

FERC Control Number: JD79–1168
API Well Number: 17–111–02078
Section of NGPA: 198
Operator: IMC Exploration Company
Well Name: Potts No. 3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.5 MMcf.

FERC Control Number: JD79–1169
API Well Number: 17–111–21514
Section of NGPA: 103
Operator: Penzoil Producing Company
Well Name: FEE 61 No. 38
Field: Monroe
County: Union
Purchaser: United Gas Pipe Line Company
Volume: 35 MMcf.

FERC Control Number: JD79–1170
API Well Number: 17–111–00325
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: B. L. Reppond No. 3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79–1171
API Well Number: 17–111–00555
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: L. F. Roberson No. 3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 4.7 MMcf.

FERC Control Number: JD79–1172
API Well Number: 17–111–00556
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: R. C. Roberson No. 2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.15 MMcf.

FERC Control Number: JD79–1173
API Well Number: 17–111–00513
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: W. N. Reppond No. 1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 3.3 MMcf.

FERC Control Number: JD79–1174
API Well Number: 17–111–00324
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Louis Reppond No. 1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.8 MMcf.

FERC Control Number: JD79–1175
API Well Number: 17–055—20140
Section of NGPA: 102 and 103
Operator: Exchange Oil and Gas Corporation
Well Name: Roy L. Smith No. 2
Field: Ridge
County: Lafayette
Purchaser: United Gas Pipe Line Company
Volume: 876 MMcf.

FERC Control Number: JD79–1176
API Well Number: 17–111–20165
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 63
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79–1177
API Well Number: 17–111–20166
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 64
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–1178
API Well Number: 17–111–02239
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 65
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79–1179
API Well Number: N/A
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Pace No. 1
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 2.9 MMcf.

FERC Control Number: JD79–1180
API Well Number: 17–111–20137
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 54
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79–1181
API Well Number: 17–111–20138
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 55

Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-1182
API Well Number: 17-111-20140
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 56
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-1183
API Well Number: 17-111-20161
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 57
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-1184
API Well Number: 17-111-20162
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 58
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 14.2 MMcf.

FERC Control Number: JD79-1185
API Well Number: 17-111-20168
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 59
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79-1186
API Well Number: 17-111-20163
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 60
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79-1187
API Well Number: 17-111-20169
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 61
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-1188
API Well Number: 17-111-20164
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Olin Gas Trans Corp No. 62
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.4 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, N.E., 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 within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.
[FR Doc. 79-11087 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Idaho Power Co.; Compliance Filing

April 5, 1979.

Take notice that on April 3, 1979, the Idaho Power Company Tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supercedes Original Volume No. 1) during February, 1979, along with cost justification for the rate charged.

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 such petitions or protests should be filed on or before April 30, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[Docket No. ER 79-284]
[FR Doc. 79-11091 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Kansas Power & Light Co.; Tariff Change

April 5, 1979.

Take notice that The Kansas Power and Light Company (KPL) on March 30, 1979, tendered for filing proposed new increased Schedules of Rates and Charges for Wholesale Service—Rural Electric Cooperatives and for Wholesale Service—Municipalities to supersede and replace those rate provisions of KPL's Contract rate schedules presently in effect and on file with the Commission which relate to seventeen (17) wholesale cooperative customers and forty-one (41) wholesale municipal customers of KPL located in the State of Kansas, as follows:

Wholesale cooperative customer	Proposed schedule	Superseding and replacing
1. Ark Valley Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 6, Schedule RCW-78 in KPL's FERC Rate Schedule No. 148.
2. Brown-Atchison Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 149.
3. Butler Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 150.
4. C. & W. Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 151.
5. Coffey County Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 152.
6. D. S. & O. Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 153.
7. Doniphan Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 4, Schedule RCW-78 in KPL's FERC Rate Schedule No. 154.
8. Flint Hills Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 155.
9. Kaw Valley Electric Cooperative Company, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 156.
10. Leavenworth-Jefferson Electric Cooperative, Inc	Schedule RCW-79	Supplement No. 6, Schedule RCW-78 in KPL's FERC Rate Schedule No. 157.
11. Lyon County Electric Cooperative, Inc	Schedule RCW-79	Supplement No. 4, Schedule RCW-78 in KPL's FERC Rate Schedule No. 158.
12. Nemaha-Marshall Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 159.
13. Kinnescah Rural Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 4, Schedule RCW-78 in KPL's FERC Rate Schedule No. 160.
14. P. R. & W. Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 161.
15. The Smoky Hill Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 162.
16. Smoky Valley Electric Cooperative Association, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 163.
17. Twin Valley Electric Cooperative, Inc	Schedule RCW-79	Supplement No. 3, Schedule RCW-78 in KPL's FERC Rate Schedule No. 164.
18. City of Herington	Schedule WCM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 56.
19. City of Morrill	Schedule WCM-79	Schedule MWH-63 or Schedule WSM-78, as filed or as amended, whichever is applicable to KPL's FERC Rate Schedule No. 121 as of the effective date thereto of Schedule WSM-79.
20. City of Toronto	Schedule WSM-79	Schedule MWH-63 or Schedule WSM-78, as filed or as amended whichever is applicable to KPL's FERC Rate Schedule No. 124 as of the effective date thereto of Schedule WSM-79.

Wholesale cooperative customer	Proposed schedule	Superseding and replacing
21. City of Seneca	Schedule WSM-79	Schedule MWH-63 or Schedule WSM-78, as filed or as amended, whichever is applicable to KPL's FERC Rate Schedule No. 126 as of the effective date thereto of Schedule WSM-79.
22. City of Waterville	Schedule WSM-79	Schedule MWH-63 or Schedule WSM-78, as filed or as amended, whichever is applicable to KPL's FERC Rate Schedule No. 128 as of the effective date thereto of Schedule WSM-79.
23. City of Scranton	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 129.
24. City of Wathena	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 147.
25. City of Goff	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 165.
26. City of Netawaka	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 166.
27. City of Muscotah	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 167.
28. City of Severance	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 171.
29. City of Altamont	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 172.
30. City of Marion	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 173.
31. City of Oswego	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 174.
32. City of Enterprise	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 175.
33. City of Chapman	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 176.
34. City of Clay Center	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 178.
35. City of DeSoto	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 179.
36. City of Axtell	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 180.
37. City of Robinson	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 181.
38. City of Horton	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 182.
39. City of Eudora	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 183.
40. City of Wamego	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 184.
41. City of Sabetha	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 185.
42. City of Minneapolis	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 186.
43. City of Starling	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 187.
44. City of Hillsboro	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 188.
45. City of Holton	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 189.
46. City of Reserve	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 190.
47. City of Larned	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 191.
48. City of Ellinwood	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 192.
49. City of Stafford	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 193.
50. City of Osage City	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 194.
51. City of St. Marys	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 195.
52. City of Vermillion	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 196.
53. City of Alma	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 197.
54. City of Centralia	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 198.
55. City of Lindsborg	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 199.
56. City of Elwood	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 200.
57. City of Troy	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule Nc. 201.
58. City of St. John	Schedule WSM-79	Schedule WSM-78 in KPL's FERC Rate Schedule No. 202.

The proposed changes would increase revenues from jurisdictional sales and service by $2,657,847 based on the twelve-month period ending March 31, 1980. The changes embodied in the new Schedules of Rates and Charges include revised rates for Capacity Charges.

KPL states that under its presently effective rates therefor its rate of return on the allocated cost of service to wholesale cooperative customers is 8.465% and for the wholesale municipal customers is 6.336%. The new schedules of rates and charges will increase KPL's rate of return to 10.255% on its wholesale service to cooperative customers and 10.250% on its wholesale service to municipal customers based on the twelve-month period ended March 31, 1980. The most recent adjustment in rates for KPL's wholesale customers was in 1978.

Copies of the filing were served upon KPL's seventeen (17) wholesale cooperative customers and forty-one (41) wholesale municipal customers and upon the State Corporation Commission of the State of Kansas.

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, NE., 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 27, 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.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER 79-283]
[FR Doc. 79-11093 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Michigan Wisconsin Pipeline Co.; Order Accepting for Filing and Suspending Proposed Rate Increase, Subject to Conditions, Granting Waiver, and Establishing Procedures

March 30, 1979.

On March 1, 1979, Michigan Wisconsin Pipeline Company (Michigan Wisconsin) tendered for filing proposed changes in its FERC tariff[1] proposed to become effective April 1, 1979. The filing would increase annual jurisdictional revenues by $84 million. The proposed increased rates are based on a test period based on actual costs for the twelve months ended November 30, 1978, as adjusted for known and measurable changes in costs for the 9 month period ended August 31, 1979.

Michigan Wisconsin proposes an overall rate of return of 11.5% and states that the increased rates are necessary to recover increased operation and maintenance expenses and to finance investments in facilities related to supply acquisitions and storage. The rates are predicated upon a 46% federal income tax rate. Additionally, Michigan Wisconsin states that the proposed rates reflect the *United* method of cost classification, cost allocation, and rate design. Michigan Wisconsin notes that the cost of service underlying the rates filed herein reflects costs associated with certain uncertificated facilities and that the filing includes rate schedules for certain transportation services (the revenues for which are shown on Statement (G)) not yet approved by the Commission. Michigan Wisconsin anticipates receiving all necessary certifications prior to the time the proposed rates go into effect, but requests waiver of the Commission's Regulations to the extent necessary to allow inclusion of such costs and revenues pending requisite approvals.

Public notice of the instant filing was issued on March 9, 1979, providing for protests or petitions to intervene to be filed on or before March 20, 1979.

Based upon a review of Michigan Wisconsin's filing the Commission finds that the proposed rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets listed in Appendix A, suspend their effectiveness for five months until September 1, 1979, subject to refund and the conditions set forth below, and set the matter for hearing.

Inclusion of costs associated with uncertificated facilities is inconsistent with § 154.63(e)(2)(ii) of the Commission's regulations. Accordingly, acceptance for filing would require waiver of that rule. We find that good cause exists to accept Michigan Wisconsin's filing, so long as the acceptance is appropriately conditioned. In addition, for good cause shown, we shall, pursuant to Section 154.51 of the Regulations, grant waiver of Section 154.22 of the Regulations to permit inclusion in the filing of the transportation rate schedules for which Michigan Wisconsin has not received certificate authorization. The Commission will grant these waivers on condition that on or before August 31, 1979, Michigan Wisconsin file revised tariff sheets to reflect elimination of: (1) Costs associated with facilities not in service on or before that date and (2) the transportation rate schedules for which a certificate has not been received as of that date. We impose a further condition that Michigan Wisconsin shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission-approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

Michigan Wisconsin shall adjust its rates to reflect the actual advance payments balance in Account 166 as of August 31, 1979, provided that the inclusion of a higher advance payment balance will not be permitted to increase the level of the original suspended rates. Michigan Wisconsin shall also adjust its rates reflecting the effective GRI Funding Unit on the effective date of the increased rates and any resulting reduction in costs, as per Opinion Nos. 30 and 30–A.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Michigan Wisconsin.

(B) Pending hearing and decision, and subject to the conditions enumerated in this order, the tariff sheets listed in Appendix A are suspended for five months, until August 31, 1979, when they shall be permitted to become effective, subject to refund, upon motion filed by Michigan Wisconsin in accordance with the provisions of the Natural Gas Act.

(C) Waiver of § 154.63(e)(2)(ii) is granted upon condition that Michigan Wisconsin file substitute revised tariff sheets on or before August 31, 1979, reflecting the elimination of costs associated with facilities not in service and the actual balance in Account 166 as of that date. This waiver is granted on condition that the inclusion of a higher advance payment balance in Account 166 will not be permitted to increase the level of the original suspended rates, and upon further condition that Michigan Wisconsin shall not be permitted to make offsetting adjustments to the suspended rates except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

(D) Waiver of §§ 154.22 and 154.51 is granted, provided that Michigan Wisconsin shall eliminate such rate schedules from its tariff on or before August 31, 1979 if certificate authorization is not received from the Commission as that date and subject to the provision of Ordering Paragraph (C) above.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before June 1, 1979.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR. 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(G) Acceptance for filing of the tariff sheets enumerated in Appendix A is conditioned upon Michigan Wisconsin reflecting the effective GRI Funding Unit on the effective date of the increased rates and any resulting reductions in costs, as per Opinion Nos. 30 and 30–A.

By the Commission.

Kenneth F. Plumb,
Secretary.

Appendix A

Second Revised Volume No. 1
Twenty-third Revised Sheet No. 27F
First Revised Volume No. 2
Ninth Revised Sheet Nos. 92, 110, 129 and 130
Eighth Revised Sheet Nos. 141, 142 and 171
Sixth Revised Sheet Nos. 214 and 215
Fifth Revised Sheet Nos. 231, 232, 297, 315 and 339

[1] See Appendix A.

Fourth Revised Sheet Nos. 420 and 421
Second Revised Sheet No. 656
First Revised Sheet Nos. 486, 508, 519, 531, 543, 563, 575, 585, 596, 597, 611, 612, 618, 619, 680, 681, 698 and 699

[Docket No. RP79-39]
[FR Doc. 79-11076 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Mississippi River Transmission Corp.; Informal Settlement Conference

April 5, 1979.

Take notice that on April 24, 1979, at 1:00 P.M. an informal conference of all interested persons will be convened for the purpose of continued settlement discussions in this proceeding. The conference will be held at a meeting room of the Federal Energy Regulatory Commission at 825 North Capitol Street, N.E., Washington, D.C. 20426. Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in this proceeding and to make commitments with respect to such issues and any offers of settlement or stipulation discussed at the conference.

Lois D. Cashell,
Acting Secretary.

[Docket No. RP78-77]
[FR Doc. 79-11094 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Southern California Edison Co.; Tariff Change

April 5, 1979.

Take notice that Southern California Edison Company (Edison) on April 2, 1979, tendered for filing a change of transmission service charges under the provisions of Edison's agreement with the City of Anaheim as embodied in Rate Schedule FERC No. 83.

The change of rate for transmission service charges is as follows:

Current rate (8.98% rate of return): 1.25 mills/kWh.
New rate (9.6% rate of return): 1.32 mills/kWh.
Increase: 0.07 mills/kWh.

Said filing is in accordance with terms of the agreement stating that whenever the California Public Utilities Commission (CPUC) finds a new overall rate of return on retail operations to be reasonable for Edison the charges for transmission services shall be adjusted based on said new rate of return. Said new rate of return of 9.6% was authorized in CPUC Decision No. 89711, effective January 1, 1979.

Copies of this filing were served upon the City of Anaheim and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this application should file petition to intervene 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 30, 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.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER 79-282]
[FR Doc. 79-11095 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (Stat. 422 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Dynamic International Freight Forwarders, Inc., 19400 W. Ten Mile Road, Suite 103, Southfield, MI 48075. Officers: Evelyn Siegel, President/Treasurer, Kenneth Peter, Financial Vice President, Walter Baker, Vice President/Secretary.

Caspian Marine International (Abolfazl Seddighzadeh, d.b.a.), 8402 Braeburn Valley Drive, Houston, TX 77074.

Atlas International (Gonzalo Garcia, d.b.a.), 2406 N.W. 72nd Avenue, Miami, FL 33122.

United Dispatch Services (Rene Lopez & David Romano, d.b.a.), 1349 N.W. 88th Avenue, Miami, FL 33126.

Consolidated Materiel Expediting, Inc., 2128 Burnett Blvd., Suite 3, P.O. Box 3786, Wilmington, NC 28406. Officers: Wallen U. Klann, President, Sharil S. Conlay, Vice President, Operations, P. Kirby Thomas, Vice President, Erika Klann, Secretary.

A & A Ltd. (Charles V. Renaut, d.b.a.), 137 Hathaway Street, Wareham, MA 02571.

North Atlantic Freight Forwarders, Inc., 115-15 Sutphin Blvd., Jamaica, NY 11436. Officers: Anthony E. Cincotta, President, Charlene J. Essabba, Vice President.

Bowling Green Freight Forwarding Co., Inc., 11 Broadway, Suite 1420, New York, NY 10004. Officers: Alice Papajohn, President, Mary P. Haris, Treasurer, Franklin Kane, Secretary.

PABS Forwarding, Inc., 6280 Third Street, San Francisco, CA 94124. Officers: Morris C. Palana, President/Director, Phillip B. Balanga, Vice President/Director, Anthony J. Santos, Secretary/Director, Demetrio R. Jayme, Treasurer/Director.

Avion Forwarding, Inc., 153-04 Rockaway Blvd., Jamaica, NY 11434. Officer: Charles Lorme, President.

Nelda Pierce Moore, 191 Aldine Bender, Houston, TX 77060.

Alrod International, Inc., 1564 Rollins Road, Burlingame, CA 94010. Officers: Alberto M. Rodriguez, President, George C. Gepp, Vice President/Treasurer, Marta C. Rodriguez, Secretary.

Mark V, Inc., 145-60 157th Avenue, Jamica, NY 11434. Officers: James O'Melia, President, Dolores O'Melia, Secretary/Treasurer.

Crescent Air Freight Ltd., 161-15 Rockaway Blvd., Jamaica, NY 11434. Officers: Shaukat A. Shariff, President, Rashida Shariff, Vice President/Secretary.

Herbert Hall Pierce, 3805 Cypress Shores Drive, North Route 4, Box 142, Mobile, AL 36609.

Middle Eastern Transport Agencies Ltd., One World Trade Center, Suite 1125, New York, NY 10048. Officers: Jean T. Gigori, President, Klaus Stankowitz, Exec. V. P., Secretary/Treasurer, Roger T. Giorgi, Vice President, Roger Hamm, Vice President.

Lords Proprietors Freight Forwarding (Linda C. Davis, d.b.a.), 145 King Street, No. 209, Charleston, SC 29401.

Transcargo New York, Inc., 40 East 38th Street, New York, NY 10016. Officers: Claudio J. C. Pereira, President, Shelia Abi Saber, Vice President/Treasurer, Joseph M. Ramilo, Secretary.

International Movements (David Michael Dawson, d.b.a.), P.O. Box 2887, Baltimore, MD 21225.

An-Mar Project International, Inc., 17 Battery Place, New York, NY 10004. Officers: Wm. H. Schmidt, Director/President/Treasurer, Charles Thie, Director, Mercedes Schmidt, Director, Anna Marie Hoelscher, Secretary.

Comet Air & Ocean Freight Forwarders, 708 S. Isis Avenue, Inglewood, CA 90301. Officers: Larry Denkler, President, Terry Bealey, Vice President.

Total Cargo International, Inc., 7780 N.W. 72nd Avenue, Miami, FL 33166. Officers: Rafael M. Cervera, Director/President, Humberto Diaz Arguelles, Director/Secretary/Treasurer.

Tooze & Associates (Walter L. Tooze, d.b.a.), 4610 S.E. Belmont Street, Portland, OR 97215.

Hemisphere Forwarding Division of Hemisphere Warehouses, Inc., 7971 N.W. 76th Avenue, Miami, FL 33166, Officers: W. P. C. Adams, President, J. P. Corrigan Jr., Secretary.

CNT International (Charles N. Tobiasek, d.b.a.), 6943 Loftygrove Drive, Rancho Palos Verdes, CA 90274.

International Freight Traffic Control (Michael W. Jackowski, d.b.a.), 5212 N.W. 35th Avenue, Miami, FL 33142.

Chenice Freight Services, Inc., 4061 62nd Street, Woodside, NY 11377, Officers: Yee Hwa (Cynthia) Chen, President/Director, So-Chun Rosamond Yiu, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: April 5, 1979.

Francis C. Hurney,
Secretary.

[FR Doc. 79-11072 Filed 4-9-79; 8:45 am]

BILLING CODE 6730-01-M

Determination; Lykes Bros. Steamship Co., Inc.

The Federal Maritime Commission hereby gives notice that the following agreement has been submitted to the Commission for determination of whether or not it is subject to the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), and, if it is determined that the agreement requires approval, whether it is approvable under the criteria of section 15 of the Shipping Act.

Although this agreement may not be subject to section 15 of the Shipping Act, interested parties are given an opportunity to comment on this notice if they so desire. Interested parties may inspect and obtain copies of the agreement at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423, or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, D.C. 20753, on or before April 30, 1979.

AGREEMENT NO. 10365.

FILING PARTY: Mr. R. F. Tifft, Traffic Manager, Lykes Bros. Steamship Co., Inc., 1001 Connecticut Avenue, N.W., Washington, D.C. 20036.

SUMMARY: Agreement No. 10365, between Lykes Bros. Steamship Co., Inc. and China Ocean Shipping Company, is a cooperative working arrangement whereby the parties agree that (1) the vessels of China Ocean Shipping Company will call at ports of the United States of America open to foreign trade and the vessels of Lykes Bros. Steamship Co. will likewise call at ports of the People's Republic of China open to foreign trade; (2) the booking of cargo, freight tariffs, shipping documents, appointment of agents, and the like are to be separately arranged by each company; (3) in instances where the vessel of one party meets with any troubles or difficulties at a port of the call, the other party will render every assistance possible; (4) both parties undertake to exchange information in shipping; and (5) both parties shall work in a joint effort for the promotion of friendship between the two countries.

By Order of the Federal Maritime Commission.

Dated: April 5, 1979.

Francis C. Hurney,
Secretary.

[FR Doc. 79-11073 Filed 4-9-79; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Activated Factor IX Concentrate; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a public meeting to discuss the possible recommended use of activated factor IX for the treatment of patients with inhibitors to factor VIII (antihemophilic factor).

DATE: April 27, 1979, 9 a.m. to 4 p.m.

ADDRESS: The meeting will be held in Bldg. 29, Rm. 115, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Dr. D. Aronson, Bureau of Biologics, Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-2691.

SUPPLEMENTARY INFORMATION: The Bureau of Biologics will hold a public workshop to discuss evidence from clinical experience relating to the proposed recommended use of activated factor IX concentrate for the treatment of patients with inhibitors to factor VIII (antihemophilic factor). The proposed agenda for the workshop is as follows:

1. Introduction to the problem.
2. Laboratory characteristics of activated factor IX.
3. Evaluation of clinical data on activated factor IX.
4. Consensus development concerning inhibitor levels, patients clinical status and indications for use of factor IX.
5. Recommendations for further studies.

The workshop will be held from 9 a.m. to 4 p.m., April 27, 1979 in Bldg. 29, Rm. 115, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205. Interested persons are invited to attend the workshop.

Dated: April 4, 1979.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[Docket No. 79N-0082]

[FR Doc. 79-10942 Filed 4-9-79; 8:45 am]

BILLING CODE 4110-03-M

Nitrosamine-Contaminated Cosmetics; Call for Industry Action; Request for Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives notice that the Food and Drug Administration (FDA) has evidence that some topically applied cosmetics are contaminated with nitorsamines and may be hazardous to human health. The agency is continuing to investigate the need for regulatory action, but meanwhile is urging the cosmetic industry to take steps to eliminate to the extent possible nitrosamine contamination of cosmetic products.

ADDRESS: Comments, data, and information to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heinz J. Eiermann, Bureau of Foods (HFF-440), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1530.

SUPPLEMENTARY INFORMATION: The agency is concerned about contamination of cosmetic products with nintrosamines, particularly *N*-nitrosodiethanolamine (NDELA). This concern is based on studies that establish the animal carcinogenicity of NDELA, indicate its presence in a variety of cosmetic products, and indicate that NDELA penetrates human skin under conditions of use.

Some nitrosamines are potent animal carcinogens. The carcinogenicity of NDELA at high dose levels has been established in two animal species. In a rat feeding study, a cumulative dose of 150 to 300 grams per kilogram body

weight (g/kg) produced liver cancer in 20 of 20 animals over a period of 240 days (Ref. 1). In Syrian hamsters, a subcutaneously administered dose totaling 15g/kg produced cancers of the trachea and nasal cavity in 39 of 56 animals within 546 days (Ref. 2).

A limited number of cosmetic products have been analyzed for NDELA in both private and FDA laboratories. A number of these products were found to be contaminated with NDELA. The contamination is believed to be caused by the chemical reaction between the amines used to formulate the products and a nitrosating agent.

A wide variety of chemicals can act as nitrosating agents. In cosmetics, some of the likely nitrosating agents appear to be nitrites, oxides of nitrogen, and some C–nitro compounds (organic compounds that have a nitro group attached to a carbon atom in the molecule). Nitrites and oxides of nitrogen are usually not used as cosmetic ingredients, but may enter a cosmetic as a contaminant of an ingredient. C-nitro compounds are known to be used as ingredients in cosmetics.

Regardless of the source of the nitrite, oxide of nitrogen, or other nitrosating agent, it may react with diethanolamine to form NDELA or with other amino compounds to form other *N*-nitroso compounds. This reaction may occur either in a cosmetic ingredient or during manufacture or storage of a cosmetic product.

Amines such as triethanolamine, diethanolamine, and monoethanolamine are widely used as cosmetic ingredients. They belong to a class of chemicals known generally as alkanolamines. Alkanolamines, when combined with fatty acids, form a soap that may serve as a emulsifier that permits the mixing of oil and water. Alkanolamines are used in shampoos, bubble bath products, facial cosmetics, and many types of creams and cream lotions. Diethanolamine is a component of triethanolamine and of a large number of diethanolamine salts and amides of fatty acids that serve as foam boosters, stabilizers, and conditioners in shampoos and related products.

Analytical methods for identifying nitrosamines such as NDELA at concentrations of parts per million (ppm) and parts per billion (ppb) are quite new. Recently, a new analytical technique for detecting NDELA at these levels in cosmetics has been reported (Ref. 3). Analyses were made of 29 cosmetics thought likely to contain such contamination. It was found that 27 of the 29 contained up to 48 ppm of NDELA.

Similar findings resulted when FDA later analyzed additional samples of commercial cosmetic products for NDELA contamination (Ref. 4). Of the 191 selected cosmetics analyzed for NDELA, 17 contained in excess of 2 ppm, 43 contained levels between 30 ppb and 2000 ppb, 17 contained trace levels below 30 ppb, and in the remaining 114 samples no NDELA was detected. The most highly contaminated cosmetic products usually contained as ingredients both an alkanolamine, generally triethanolamine, and a nitrosating agent. This correlation suggests that the highest levels of nitrosamine contamination in cosmetics occur when the nitrosating agent is an ingredient. It also suggests that the lower levels are more likely to occur when the nitrosating agent is a contaminant of an ingredient and is not purposely added to a cosmetic formulation.

Recent studies have also been conducted in FDA laboratories to determine whether NDELA penetrates the skin. The agency now has evidence that NDELA penetrates excised human skin from an aqueous vehicle (Ref. 5). One study that has been completed demonstrated that NDELA penetrates the skin of live monkeys (Ref. 6). Further studies are being conducted to better assess NDELA penetration through skin.

The Commissioner of Food and Drugs has therefore determined that cosmetics containing nitrosamines may be considered adulterated under section 601 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 361). Cosmetic manufacturers are put on notice that cosmetic products may be analyzed by FDA for nitrosamine contamination and that indivudual products could be subject to enforcment action.

However, the Commissioner is still considering whether a compliance program is needed to reduce or eliminate nitrosamine contamination in cosmetics, and, if so, what the nature of the program should be. Three factors will influence the Commissioner's decision on how to proceed in this matter:

1. The results of FDA's continuing efforts to understand better the nature of the problem and the means of reducing or preventing it. More information is needed on how nitrosamines get into cosmetic products; on the identity of nitrosamines, in addition to NDELA, that may be found; on what product conditions favor the formation of nitrosamines; and on possible means to counteract nitrosamine formation by adding other substances.

2. The extent to which the public health risk is alleviated by industry reformulation of products.

3. The results of FDA's continuing efforts to determine the extent of the formation of, and human exposure to, nitrosamines in cosmetics. This information will help guide FDA in identifying the level of product contamination above which regulatory action is most needed.

FDA urges the cosmetic industry to take immediate measures to eliminate to the extent possible NDELA and any other nitrosamines from cosmetic products. The Commissioner believes that cosmetic products can be formulated to prevent the formation of high levels of NDELA and thereby significantly reduce the potential hazard.

To accomplish this, cosmetic manufacturers are urged to remove from their alkanolamine-containing products any ingredient that may act as a nitrosating agent. The Commissioner believes that such ingredient changes could eliminate most of the higher levels of NDELA contamination of cosmetics. In the Commissioner's opinion, the incidence of use of this combination of ingredients is not great, and the C-nitro compounds can in most of these cosmetics be replaced by other ingredients that do not nitrosate amines. The Commissioner has information that some manufacturers have already reformulated their products in this manner.

To further reduce likely contamination of cosmetics, alkanolamines and their derivatives used as cosmetic ingredients should be analyzed for NDELA and other nitrosamines. The Commissioner acknowledges the difficulties involved in analyzing cosmetics and cosmetic ingredients for nitrosamine contamination and recognizes that many manufacturers do not have the resources required for analyses, which require specialized equipment and experienced analytical chemists. The FDA is itself still refining its analytical methodology for determining and confirming the presence of nitrosamines. The Commissioner expects that ingredient reformulation will remove much of the high level contamination, but urges that manufacturers take all possible steps to identify and eliminate these other sources of nitrosamine contamination of cosmetics.

Action should be initiated by the cosmetic industry to expand the knowledge of nitrosating reaction mechanisms under conditions of

cosmetic manufacture. A better understanding of these reactions is expected to lead to the development of preventive measures, either through elimination of nitrosating contaminants or through addition to cosmetics of substances counteracting nitrosation.

In sum, the Commissioner encourages all cosmetic manufacturers to ascertain whether the formulation of their products might be changed to prevent the formation of nitrosamines by reaction of the ingredients and to take other appropriate steps that will lead to the reduction of nitrosamine contamination of their cosmetic products.

The goal of this notice is to reduce the public health risk to the extent possible by voluntary industry action. The FDA will continue to assess the public health implications of nitrosamine-contaminated cosmetics and will take regulatory action if and when it is needed.

The Commissioner invites interested persons to submit comments, scientific data, or other information regarding nitrosamine contaminants in cosmetics. Of particular interest are data on the toxicology of NDELA, its penetration through human skin, its reaction chemistry under conditions of cosmetic contamination, the prevention of NDELA formation, the effectiveness of substances added to cosmetics to counteract nitrosation, and the involvement of other nitrosamines in cosmetic manufacture. Any comments or scientific data, identified with the Hearing Clerk docket number found in brackets in the heading of this document, should be forwarded to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

REFERENCES

(1) Druckery, H., R. Preussman, and P. Ivankovic, "Organotropic Carcinogene Wirkungen bei 65 Verschiedene *N*-Nitroso-Verbindungen an Bd-Ratten," *Zeitschrift fur Krebsforchung*, 69:103, 1967.

(2) Hilfrich, J., I. Scheltz, and D. Hoffman, "Effects of *N*-Nitrosodiethanolamine and 1,1-Diethanolhydrazine in Syrian Golden Hamsters," *Cancer Letters*, 4:55, 1977.

(3) Fan, T., U. Goff, L. Song, D. Fine, G. Arsenault, and K. Biemann, N-Nitrosodiethanolamine in Consumer Cosmetics, Lotions and Shampoos," *Food Cosmetics Toxicology, 15:423–430, 1977.*

(4) Wenninger, J. A. and R. L. Yates, FDA Progress Report on the Analysis of Cosmetic Products and Raw materials for N-Nitrosodiethanolamine, June 30, 1978 and September 30, 1978.

(5) Scheuplein, R., FDA Quarterly Progress Report and Preliminary Findings on Percutaneous Absorption of Cosmetics, April 4, 1978.

(6) Maibach, H., Interim Reports: Parenteral Control—Rhesus Monkey, April 20, 1978; NDELA—Percutaneous Penetration, May 19, 1978; FDA Contract 2203–75–2340.

A copy of each reference document is on file in the office of the Hearing Clerk, Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[Docket No. 78N–0244]

[FR Doc. 79–10943 Filed 4–9–79; 8:45 am]

BILLING CODE 4110–03–M

Pneumococcal Vaccine Workshop; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a public meeting to discuss possible revisions to the guidelines for release of Pneumococcal Vaccine, Polyvalent. Also, other scientific data regarding the manufacture and use of pneumococcal vacccine will be presented.

DATE: May 4, 1979, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Copies of the meeting agenda and current guidelines are available from the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. The meeting will be held in Bldg. 29, Rm. 115, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Chi-jen Lee, Bureau of Biologics (HFB–530), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301–496–1042.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 31, 1978 (42 FR 4115), FDA announced the availability of guidelines for the release of Pneumococcal Vaccine, Polyvalent. The guidelines outline the laboratory test procedures and lot release requirements for the vaccine. In light of increasing information regarding this new vaccine, the Bureau of Biologics will hold a public workshop to discuss possible revisions to the guidelines. Also, other scientific information will be presented on the manufacture, administration, and physiological effects of pneumococcal vaccines. Members of the manufacturing, regulatory, and medical fields are scheduled to speak. An open discussion is scheduled at the end of the meeting.

The workshop will be held from 8:30 a.m. to 4:30 p.m., May 4, 1979, in Bldg. 29, Rm. 115, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20205. Interested persons may request copies of the current guidelines and the agenda for the public meeting by contacting the office of the Hearing Clerk (address above) and identifying the documents with the Hearing Clerk docket nunber found in brackets in the heading of this document.

Dated: April 4, 1979.

William F. Randolph,

Acting Associate Commisssioner for Regulatory Affairs.

[Docket No. 77D–0430]

[FR Doc. 79–10941 Filed 4–9–79; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Proposed MAC's and Announcement of Public Hearing

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

ACTION: Notice.

SUMMARY: The Pharmaceutical Reimbursement Board proposes maximum allowable cost (MAC) limits on the drugs specified below and announces a public hearing with regard to these proposed MAC limits.

DATES: Hearing—May 30, 1979 (9 a.m.–5 p.m.) and May 31, 1979 (9 a.m.–5 p.m.). End of comment period; May 15, 1979. End of period for submission of requests to appear at the hearing: May 15, 1979.

PLACE OF HEARING: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Rodler, Executive Secretary, Pharmaceutical Reimbursement Board, 3076 Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

SUPPLEMENTARY INFORMATION: The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration for the purpose of setting MAC limits on certain multiple source drugs for which reimbursement is provided under Medicaid, Medicare and other programs administered by the Department. Pursuant to 45 CFR 19.5 (as amended at 43 FR 35310–11, August 9, 1978), the Pharmaceutical Reimbursement Board proposes the following MAC limits:

Diphenoxylate hydrochloride w/ atropine sulfate tablets, 2.5 mg/.025

mg	$0.0491
Hydralazine HC1 tablets, 25 mg	0.0279
Hydralazine HC1 tablets, 50 mg	0.0384
Erythromycin ethylsuccinate oral liquid, 200 mg/5 cc	0.0266
Erythromycin ethylsuccinate oral liquid, 400 mg/5 cc	0.0499
Methocarbamol tablets, 500 mg	0.0496
Methocarbamol tablets, 750 mg	0.0595
Minocycline capsules, 100 mg	0.4778
Sulfisoxazole tablets, 0.5 Gm	0.0240
Oxyphenbutazone tablets, 100 mg	0.0799
Tetracycline HC1 syrup, 125 mg	0.0081
Doxepin HC1 capsules, 100 mg	0.2900
Chlordiazepoxide HC1 capsules, 5 mg	0.0140
Chlordiazepoxide HC1 capsules, 10 mg	0.0211
Chlordiazepoxide HC1 capsules, 25 mg	0.0438
Pencicillin G Potassimum tablets, 400 mu	0.0235
Pencicillin G Potassimum tablets, 800 mu	0.0528

The Board originally identified these multiple source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the establishment of MAC's on the drugs listed above. In making the initial determination of the lowest unit price at which each of the drugs is widely and consistently available from any formulator or labeler, the Board relied on two sources: *Drug Topics Red Book*, and a HCFA survey. *Red Book* is an authoritative and well recognized listing of advertised prices. The HCFA survey is a survey, updated monthly, of pharmacy invoice prices obtained by HCFA under contract with IMS America. The HCFA survey price is based on the 70th percentile of invoice prices.

1. *Diphenoxylate hydrochloride w/ atropine sulfate 2.5 mg/.025 mg tablets.* The Board proposes a MAC limit of $.0491 per tablet. At this price, the product is advertised in *Red Book* as being available from Smith Kline, the sixth largest ethical pharmaceutical manufacturer in the United States, and from 12 other suppliers.

2. *Hydralazine 25 mg tablets.* The Board proposes a MAC limit of $.0279 per tablet. At this price, the product is advertised in *Red Book* as being available from Lederle, the 18th largest ethical pharmaceutical manufacturer in the United States, and from 10 other suppliers.

3. *Hydralazine 50 mg tablets.* The Board proposes a MAC limit of $.0384 per tablet. At this price, the product is advertised in *Red Book* as being available from Lederle, and from 9 other suppliers.

4. *Erythromycin ethylsuccinate, 200 mg/5 cc oral liquid.* The Board proposes a MAC limit of $.0266 per cc. At this price, the HCFA survey reveals that the product is available from Wyeth Laboratories, a division of the second largest ethical pharmaceutical manufacturer in the United States.

5. *Erythromycin ethylsuccinate, 400 mg/5 cc oral liquid.* The Board proposes a MAC limit of $.0499 per cc. At this price, the HCFA survey reveals that the product is available from Wyeth Laboratories.

6. *Methocarbamol 500 mg tablets.* The Board proposes a MAC limit of $.0496 per tablet. At this price, the product is available directly from Lederle and is advertised in *Red Book* as being available from 21 other suppliers.

7. *Methocarbamol 750 mg tablets.* The Board proposes a MAC limit of $.0595 per tablet. At this price, the product is advertised in *Red Book* as being available from 18 suppliers.

8. *Minocycline 100 mg capsules.* The Board proposes a MAC limit of $.4778 per capsule. At this price, the HCFA survey reveals that the product is available from Parke Davis, the 16th largest ethical pharmaceutical manufacturer in the United States. We have been informed by Lederle Laboratories that Lederle is the sole source of this product. The Board has invited both Lederle and Parke Davis to the Public Hearing to investigate this matter further.

9. *Sulfisoxazole .5 Gm tablets.* The Board proposed a MAC limit of $.0240 per tablet. At this price, the HCFA survey reveals that the product is available from SmithKline and the product is advertised in *Red Book* as being available from 14 other suppliers.

10. *Oxyphenbutazone 100 mg tablets.* The Board proposes a MAC limit of $.0799 per tablet. At this price, the HCFA survey reveals that the product is available from USV, the 20th largest ethical pharmaceutical manufacturer in the United States.

11. *Tetracycline HCl, 125 mg/5 ml syrup.* The Board proposes a MAC limit of $.0081 per ml. At this price, the HCFA survey reveals that the priduct is available from Upjohn, the 10th largest ethical pharmaceutical manufacturer in the United States and that the Upjohn product accounts for 5.8 percent of the market for this drug. Additionally, the product is advertised in *Red Book* as being available from 22 other suppliers at this price.

12. *Doxepin 100 mg capsules.* The Board proposes a MAC limit of $.2900 per capsule. At this price, the HCFA survey reveals that the product is available from Pennwalt, and that the Pennwalt product accounts for 2.9 percent of the market for this drug.

13. *Chlordiazepoxide HCl 5 mg capsules.* The Board proposes a MAC limit of $.0140 per capsule. At this price, the HCFA survey reveals that the product is available from Lederle and the product is advertised in *Red Book* as being available from 13 other suppliers.

14. *Chlordiazepoxide HCl 10 mg capsules.* The Board proposes a MAC limit of $.0211 per capsule. At this price, the HCFA survey reveals that the product is available from Lederle, Parke Davis, Purepac, Rachelle, and Generix. In addition, the product is advertised in *Red Book* as being available at this price from 15 other suppliers.

15. *Chlordiazepoxide HCl 25 mg capsules.* The Board proposes a MAC limit of $.0438 per capsule. At this price, the HCFA survey reveals that the product is available from SmithKline and Generix. In addition, the product is advertised in *Red Book* as being available at this price from 19 other suppliers.

16. *Penicillin G Potassium 400 mu tablets.* The Board proposes a MAC limit of $.0237 per tablet. At this price, the product is advertised in *Red Book* as being available from SmithKline.

17. *Penicillin G Potassium 800 mu tablets.* The Board proposes a MAC limit of $.0528 per tablet. At this price, the product is advertised in *Red Book* as being available from SmithKline.

The FDA advice and the economic data listed above are available for inspection at the Office of Pharmaceutical Reimbursement and a limited number of copies are available upon request.

Interested persons and organizations are invited to submit in writing comments on the proposed MAC's. All comments received by May 15, 1979 will be considered and will be maintained for public inspection at the Office of Pharmaceutical Reimbursement.

A public hearing on the proposed MAC's will be held May 30 and 31, 1979. Persons or organizations wishing to make presentations must submit to the Board's Executive Secretary by May 15, 1979, at least 20 copies of the proposed oral presentation in its entirety together with all supporting studies and materials and the names and addresses of proposed participants. The Board will grant every request to appear if the presentation is relevant to the proposed MAC.

Dated: April 4, 1979.

Peter J. Rodler,
Executive Secretary, Pharmaceutical Reimbursement Board.
[FR Doc. 79-10964 Filed 4-9-79; 8:45 am]
BILLING CODE 4110-35-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Report on Bioassay of Sodium Diethyldithiocarbamate for Possible Carcinogenicity; Availability

Sodium diethyldithiocarbamate (CAS 148-18-5) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of sodium diethyldithiocarbamate for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as a chelating agent in determining levels of various metals and medically in metal poisoning and metal-storage diseases.

It is concluded that under the conditions of this bioassay, sodium diethyldithiocarbamate was not carcinogenic for F344 rats or B6C3F1 mice of either sex.

Single copies of the report, Bioassay of Sodium Diethyldithiocarbamate for Possible Carcinogenicity (T.R. 172), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

Dated: March 30, 1979.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Donald S. Fredrickson, M.D.,
Director, National Institutes of Health.
[FR Doc. 79-10818 Filed 4-9-79; 8:45 am]
BILLING CODE 4110-08-M

Report on Bioassay of Phthalamide for Possible Carcinogenicity; Availability

Phthalamide (CAS 88-96-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of phthalamide for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applicants of the chemical include use as an accelerator for curing epoxy resins.

It is concluded that under the conditions of this bioassay, phthalamide was not carcinogenic for F344 rats or B6C3F1 mice of either sex.

Single copies of the report, Bioassay of Phthalamide for Possible Carcinogenicity (T.R. 161), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

Dated: March 30, 1979.

Donald S. Fredrickson, M.D.,
Director, National Institutes of Health.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

[FR Doc. 79-10819 Filed 4-9-79; 8:45 am]
BILLING CODE 4110-08-M

Report on Bioassay of (2-Chloroethyl)Trimethlammonium Chloride for Possible Carcinogenicity; Availability

(2-Chloroethyl)trimethylammonium chloride (CAS 999-81-5) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of (2-chloroethyl)trimethylammonium chloride for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as a plant dwarfing agent.

It is concluded that under the conditions of this bioassay, (2-chloroethyl)trimethylammonium chloride was not carcinogenic for F344 rats or B6C3F1 mice of either sex.

Single copies of the report, Bioassay of (2-Chloroethyl)trimethylammonium Chloride for Possible Carcinogenicity (T.R. 158), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014

Dated: March 30, 1979.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Donald S. Fredrickson, M.D.,
Director, National Institutes of Health.
[FR Doc. 79-10820 Filed 4-9-79; 8:45 am]
BILLING CODE 4110-08-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Bilingual Education-Training Programs; Closing Date for Transmittal of Applications Training-New Projects, Fiscal Year 1979

Correction

In FR Doc. 79-9346, published at page 18916, on Thursday, March 29, 1979, make the following corrections:

1. In the third column, in the section titled "For Management Training for Administrators", the first line reading *"Available funds:* $300,000" should be corrected to read *"Available funds:* $2,000,000";

2. In the third column, in the section titled "For Management Training for Non-Administrators", the first line reading *"Available funds:* $3,000,000" should be corrected to read *"Available funds:* $300,000".

BILLING CODE 1505-01-M

Office of Education

Closing Date for Transmittal of Noncompeting Continuation Applications (By Invitation Only) for Additional Fiscal Year 1979 Funds

Applicants will be invited to apply for additional funds for expanded demonstration activities (referred to as resource centers) by letter of invitation from the Commissioner of Education or his authorized representative. Letters of invitation are expected to be mailed by April 13, 1979.

Authority for this activity is contained in sections 551-554 of the Economic Opportunity Act of 1964, as amended by Pub. L. 95-568.
(42 U.S.C. 2929 *et. seq.*)

The resource center grants are awarded among those local Follow Through projects which have had educational practices validated by the Office of Education/National Institute of Education's Joint Dissemination Review Panel.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, applications for resource center grants should be

mailed or hand delivered by June 4, 1979.

If the application is late, the Office of Education may lack sufficient time to review it with other resource center applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center Attention: 13.433D, Washington, D.C. 20202.

Applicants are encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C., time) daily except Saturdays, Sundays, and Federal holidays.

Program Information; In formulating proposals for resource center grants, applicants should give special attention to §158.15a of the *Follow Through Regulations* which provides an explanation of the procedure to be used in evaluating these proposals.

Available Funds: It is estimated that approximately $3,000,000 will be made available for resource center grants in FY 1979. It is estimated that FY 1979 funds will support the existing 20 resource center grants. In FY 1979 the funds for a resource center is expected to range from approximatley $75,000 to $175,000.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

Application Forms: Application forms and program information packages are expected to be enclosed with the letters of invitation. They may be obtained by writing to the Division of Follow Through, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3624, Regional Office Building 3), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Special Procedures: Every applicant is subject to the State and areawide clearinghouse procedure under OMB Circular A–95.

An applicant should check with the appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application. The applicant must consider comments from the clearinghouse(s) before submitting the application to the Office of Education.

In its application each applicant must provide an assurance of compliance with clearinghouse review requirements. The assurance consists of:

(a) A State application identifier number obtained from the clearinghouse, and

(b) Clearinghouse comments.

However, an applicant may certify that either or both the State and areawide clearinghouses have been provided an opportunity to review the application and that no comments have been received.

Applicable Regulations: The regulations applicable to this program are:

(a) General Provisions for Office of Education Programs (45 CFR Parts 100 and 100a), and

(b) Regulations governing the Follow Through Program (45 CFR 158) published in the **Federal Register** on June 29, 1977.

Further Information: For further information contact, Mrs. Rosemary C. Wilson, Direction, Division of Follow Through, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3624, Regional Office Building 3), Washington, D.C. 20202, Telephone (202) 245–2500.

(42 U.S.C. 2929 *et. seq.*)

(Catalog of Federal Domestic Assistance No. 13.433, Follow Through Program)

Dated: April 2, 1979.

John Ellis,

Acting U.S. Commissioner of Education.

[FR Doc. 79-11105 Filed 4-9-79; 8:45 am]

BILLING CODE 4110-02-M

Office of the Secretary

Data Collections, School Year 1978–79

Under the Paperwork Control Amendments of 1978, section 400A of the General Education Provisions Act, the Secretary of Health, Education, and Welfare is responsible for reviewing and approving collection of information and data acquisition activities of all Federal agencies

(1) Whenever the respondents are primarily educational agencies or institutions; and

(2) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

One requirement is "no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it." The Secretary has delegated authority to the Assistant Secretary for Education. Since this requirement was only enacted in November, 1978, Federal agencies could not have complied with it for data to be collected in School Year 1978–79 (the plan would have had to be announced by February, 1978, nine months before enactment of this legislation). However, if those requirements did apply, I would determine an unusual circumstance exists because of the recent enactment of new review requirements.

I ask the affected educational agencies and institutions to cooperate with the following listed data collection activities which have been reviewed by the Federal Education Data Acquisition Council (FEDAC) staff.

Dated: April 2, 1979.

Mary F. Berry,

Assistant Secretary for Education.

Data Collections, School Year 1978–79

Approved by FEDAC

Agency form No.	"Federal Register" announcement date	Title	Estimated No. of hours required per respondent	Respondent	Respondent burden (annual man-hours)
NIE 190A–E	5/4/78	High School Survey Follow-Up	.59	Teachers, Principal, Counselors.	1,620
NCES 2300–2.1A and B	1/16/79	Degrees and Other Formal Awards Conferred Between July 1, 1978 and June 30, 1979.	3.8	Colleges and Universities.	11,780
NCES 2300–2.3	1/31/79	Fall Enrollment in Institutions of Higher Education, 1979.	1.	Colleges and Universities.	3,130
NCES 2300–2.8	1/31/79	Residence and Migration of College Students, Fall 1979.	1.5	Colleges and Universities.	4,800
NCES 2408	8/16/78	Field Test 1979 including Hispanic Supplement "High School and Beyond" A National Longitudinal Study.	1.	High School Students and Staff.	5,202
NCES 2410	1/16/79	Higher Education General Information Survey Post Survey Validation.	3.	Colleges and Universities.	360
OE 354; –1	6/23/78	Financial Status and Performance Reports, Indian Education.	10.	LEAs, Indian Tribes and Organizations.	12,000
OE 376	1/31/79	Financial Status and Performance Reports for Follow Through Programs.	2.5	LEAs, IHEs, SEAs	540
OE 623	2/9/79	Basic Opportunity Grant Validation Form	.33	Postsecondary Students	66,000
OE 642–1; –2	1/31/79	A Study of Parental Involvement in Four Federal Education Programs.	1.91	LEAs and Schools	2,680
OE 675	12/26/78	Application for Citizens Education for Cultural Understanding.	25.	SEAs, LEAs, Colleges and Universities, Private, Non-profit Organizations.	12,500
OE 680–1 thru –4	1/16/79	Assessment of Vocationally Funded Industrial Arts Programs for Development of Quality Standards.	.614	Principals, Schools Administrators, and State Industrial Arts Supervisors.	4,640
OE 692	2/22/79	Application for Federal Assistance—Career Education Incentive Program.	40.	LEAs, SEAs, Colleges, Non-profit Organizations.	32,000
OE 4376; –1	2/15/79	Annual Survey of Children in Institutions Operated and Supported by a State Agency for Neglected or Delinquent Children.	1.	State Agencies Local Agencies.	1,600
OE 9055	12/26/78	FY 1980 Annual Program Plan for Part B, P.L. 94–142 and P.L. 89–313, Education for All Handicapped Children.	45.	SEAs	2,610

In Process of Review, Modifications May be Required

ASE 0004	10/23/78, 2/15/79	Application for the "Improving Opportunities for Youth" Program, FIPSE.	30.	Postsecondary Education.	6,000
NCES 2300–4	2/15/79	Financial Statistics of Institutions of Higher Education.	2.5	Colleges and Universities.	7,825
NCES 2300–5	2/15/79	College and University Libraries Survey	2.5	Colleges and Universities.	8,931
OE 116–2; 2–1; 2–2	2/15/79	Financial Status and Performance Reports, Equal Education Opportunities Program.	5.4	LEAs, Non-profit Organizations, Colleges and Universities.	46,128
OE 417	2/9/79, 2/15/79	General Application for all State Administered OE Programs.	.5	SEAs	30
OE 365; –1	2/15/79	Financial Status and Performance Reports, Adult Education.	90.	SEAs	5,130
OE 627–1 thru –11	12/8/78	Evaluation of the Special Services for Disadvantaged Students Program.	1.08	Colleges, Postsecondary Employees, Students.	15,468
OE 628–1	12/26/78	Basic Grant Quality Control Mail Questionnaire.	1.0	Financial Aid Officers	200
OE 634	2/9/78	State Plan—Educational Improvement, Resources, and Support.	55.	SEAs	3,190
OE 637–1	1/31/79	Study of Program Management Procedures in the Campus Based and Basic Grant Programs—Mail Questionnaire.	2.0	Financial Aid Officers	1,750
OE 695		Career Education Survey of Professional Members.	.250	Teacher Members in Professional Organizations.	700
OE 1049–2	9/21/78	Monitoring and Evaluation Reports for SDIP.	8.67	Colleges and Universities.	5,200
FNS 42	2/15/79	Performance Report, Nutrition Education and Training Program.	3.6	State agencies	1,008
NSF	2/15/79	Survey of CAUSE Project Directors	.66	Project Directors	40
NSF	2/15/79	Questionnaire for the LOCI Program	.185	College Science Teachers, Students and Department Chairs.	746

[FR Doc. 79–10979 Filed 4–9–79; 8:45 am]

BILLING CODE 4110–89–M

Privacy Act of 1974; New Routine Use For System of Records

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new routine use of records within the system of Pay, Leave and Attendance Records, No. 09–90–0014.

SUMMARY: The Department of Health, Education, and Welfare proposes to establish a new routine use applicable to the system of records entitled Pay, Leave and Attendance Records. The new use would allow the Department to disclose information concerning the withholding of labor organization dues from the pay of Department employees to those financial organizations which have been designated by labor organizations to receive withheld dues on their behalf.

DATES: This routine use will become effective as proposed without further notice on May 10, 1979, unless HEW receives comments, which would result in a contrary determination, within the 30 day comment period.

ADDRESS: Comments should be addressed to the Director, Fair Information Practices Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. 20201. Comments received will be available for inspection in Room 526–F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Drury, Office of the Assistant Secretary for Personnel, Department of Health, Education, and Welfare, Room B–110, Trans Point Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone number (202) 245–2103.

SUPPLEMENTARY INFORMATION: Section 21(a) of Executive Order 11491, as amended, authorizes a Federal agency to enter into an agreement with a labor organization to deduct the dues of the organization from the pay of those agency employees who make a voluntary allotment for that purpose. Civil Service Commission regulations governing such agreements provide that an agency will remit withheld dues to the office or person designated by the labor organization. An agency must also provide an accounting of withheld dues in the form of a listing which includes the names of employees from whose pay dues were withheld, and the amount withheld for each. Such listings may also include other names, such as the names of employees transferring, or employees who did not earn enough pay to permit a deduction.

The Department of Health, Education, and Welfare has entered into a number of these dues withholding agreements with the labor organizations which represent employees of various Department components. In a number of these agreements, the labor organization has designated a bank or other financial organization as the office to which the Department should remit withheld dues. Presently the Department can remit withheld dues to these designated financial organizations. However, the Department has no authority for disclosing the listing described above to these organizations. As a consequence, these financial organizations cannot properly account for the amounts of withheld dues which they receive. This, in turn, disrupts the financial affairs of the labor organizations which these financial organizations service. The purpose for collecting the information contained in the listing described above is not to disrupt, but to support the dues withholding program. Accordingly, the Department proposes to add a new routine use to indicate that information in this system of records is or may be used "by financial organizations designated to receive labor organization dues withheld from employees' pay in order to account for the amounts of such withheld dues which they receive." The modified notice of this system of records will read as follows:

Dated: April 2nd, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

09–90–0017

SYSTEM NAME:

Pay, Leave and Attendance Records. HEW/OS/ASPER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Central Payroll and Reports Processing
Department of Health, Education, and Welfare
330 Independence Avenue, SW.
Washington, D.C. 20201
Payroll Liaison Representatives. See Appendix 1. Timekeepers in organizational units serviced by Payroll Liaison Representatives shown in Appendix 1. Personnel offices shown in HEW System 09900006, Applicants for Employment Records, Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All paid employees of the Department of Health, Ecuation, and Welfare including PHS Commissioned Corps Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to pay and leave determinations made about each employee of the Department of Health, Education, and Welfare. In addition to the name of the employee, the system includes information such as the employee's date of birth, social security number, home address, grade of rank, employing organization, timekeeper number, salary, Civil Service Commission retirement fund contributions, pay plan, number of hours worked, annual and sick leave accrual rate and usage, annual and sick leave balance, FICA withholdings, Federal, state and city tax withholdings, Federal Employees Government Life Insurance withholdings, Federal Employees Health Benefits withholdings, garnishment documents, savings allotments, union and management association dues withholdings allotments, savings bonds

allotments, and combined Federal Campaign allotments; for Commissioned Corps Personnel, information such as the following is included: years of service, payroll number, base pay, incentive pay, hazardous pay, allowances and Servicemen's Group Life Insurance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501 et seq., 5525 et seq., 6301 et seq.; 42 U.S.C. 201 et seq.; and P.L. 90–83.

ROUTING USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used or may be used:

a. To prepare W–2 Forms to submit to the Internal Revenue Service and to disclose to state and local government agencies having taxing authority pertinent records relating to employees, including name, home address, social security number (in accordance with Section 7 of Public Law 93–579), earned income, and amount of taxes withheld.

b. In accordance with Appendix B Departmental Regulations (45 CFR Part 5b) Items 01, 3, 4, 5, 6, 7, 8, 9.

c. By the Civil Service Commission in the performance of its functions.

d. By the Department of Labor to make compensation determination in connection with a claim filed by the employee for compensation on account of a job-connected injury or disease.

e. To respond to court orders for garnishment of an employee's pay for alimony or child support.

f. To respond to orders from IRS for garnishment of an employee's pay for Federal income tax purposes.

g. To the Department of Treasury for the purposes of preparing and issuing employee salary and compensation checks and U.S. Savings Bonds.

h. By state offices of unemployment compensation in connection with claims filed by former HEW employees for unemployment compensation.

i. When an individual to whom a record pertains dies, to disclose information in the individual's record to heirs, excutors and legal representatives of beneficiaries.

j. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

k. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department of any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

l. By financial organizations designated to receive labor organization dues withheld from employee's pay, in order to account for the amounts of such withheld dues which they receive.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, microfilm, punch cards and forms.

RETRIEVABILITY:

Records are maintained by pay period and are retrievable by name, SSN and Timekeeper number within each pay period. They are used to insure that each employee receives the proper pay and allowances; that proper deductions and authorized allotments are made from the employee's salary; that the employee is credited and charged with the proper amount of sick and annual leave. Records are also used to produce summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained and for related personnel management functions or pay studies, and for other purposes compatible with the intent for which the records system was created.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records submitted by the individual, such as allotment authorization forms, home address forms, and tax withholding forms are retained until superseded by new forms or until the individual leaves the Department. Most of these records are then destroyed. Some of these records must be retained for an additional period, or forwarded to the new employing agency. Time and attendance records are retained for five years and are then destroyed. The automated payroll master record, established when the individual is first employed and continually updated throughout the period of his or her employment, is retained until the individual leaves the Department.

SYSTEM MANAGER(S) ADDRESS:

Director, Division of Central Payroll and Reports Processing
P.O. Box 1825
Washington, D.C. 20013

NOTIFICATION PROCEDURE:

An individual may contact the system manager. An individual also may contact, as appropriate, Payroll Liaison Representatives in Appendix 1 or Personnel Officers shown in HEW System 09900006, Applicants for Employment Records, Appendix 1. Provide name, social security number, timekeeper number and pay period about which inquiring.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)) Federal Register, October 8, 1975, page 47410).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7) Federal Register, October 8, 1975, page 47411.).

RECORD SOURCE CATEGORIES:

Information in this system of records is (1) supplied directly by the individual, or (2) derived from information supplied by the individual, or (3) supplied by timekeepers and other Department officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

OS—Payroll Liaison Officer, Office of the Secretary, Room 4317, HEW North Bldg., 330 Independence Avenue, S.W., Washington, D.C. 20201.

OE—Payroll Liaison Officer, Office of Education, Room 3092, E, FOB 06, 400 Maryland Ave., S.W., Washington, D.C. 20202.

NIE—Payroll Liaison Officer, National Institute of Education, Room 711, Marsh Bldg., 1832 M Street N.W., Washington, D.C. 20208.

HCFA—Payroll Liaison Officer, Health Care Financing Administration, Room 1219, 330 C Street, S.W., Washington, D.C. 20201.

Social Security Administration Headquarters

Payroll Liaison Officer, SSA Headquarters, Room 1M10, Annex Bldg., 6401 Security Blvd., Baltimore, Maryland 21235.

SSA, ORS—Payroll Liaison Officer, Universal Bldg. Room 930, 1875 Connecticut Ave., N.W., Washington, D.C. 20009.

Social Security Administration Program Service Centers

Mid Atlantic—Payroll Liaison Officer, SSA, HEW Program Service Center, P.O. Box 12807, Philadelphia, Pennsylvania 19108.

North Eastern—Payroll Liaison Officer, SSA Program Service Center, 9605 Horace Harding Expressway, Flushing, New York 11368.

South Eastern—Payroll Liaison Officer, Birmingham Program Service Center, P.O. Box 1031, Birmingham, Alabama 35201.

Great Lakes—Payroll Liaison Officer, Chicago Program Service Center, 165 North Canal Street, Chicago, Illinois 60606.

Mid-American—Payroll Liaison Officer, SSA Program Service Center, 601 East 12th Street—Room 1459, Kansas City, Missouri 64106.

Western—Payroll Liaison Officer, San Francisco Program Center, P.O. Box 2000, Richmond, California 94802.

Boston, SSA—Payroll Liaison Officer, SSA, John F. Kennedy Federal Bldg., Government Center, Boston, Massachusetts 02203.

New York, SSA—Payroll Liaison Officer, SSA, 26 Federal Plaza, Room 737, New York, New York 10007.

Philadelphia, SSA—Payroll Liaison Officer, P.O. Box 8788, Philadelphia, Pennsylvania 19101.

Atlanta, SSA—Payroll Liaison Officer, SSA, Suite 1601, 101 Marietta Tower, Atlanta, Georgia 30323.

Cleveland, SSA—Payroll Liaison Officer, SSA, Room 100, 14725 Detroit Ave., Cleveland, Ohio 44107.

Chicago, SSA—Payroll Liaison Officer, SSA, 300 South Wacker Drive, Chicago, Illinois 60606.

Kansas City, SSA—Payroll Liaison Officer, SSA, 601 E. 12th Street, Kansas City, Missouri 64106.

Dallas, SSA—Payroll Liaison Officer, SSA, Room 624, 1114 Commerce Street, Dallas, Texas 75202.

Denver, SSA—Payroll Liaison Officer, SSA, Federal Office Bldg., 19th and Stout Streets, Denver, Colorado 80202.

Seattle, SSA—Payroll Liaison Officer, HEW Regional Personnel Office, Arcade Plaza Bldg. 1321 Second Avenue, Seattle, Washington, 98101.

San Francisco, SSA—Payroll Liaison Officer, HEW Personnel, 50 Fulton Street, San Francisco, California 94102.

BHA—Payroll Liaison Officer, Room 335—Webb Bldg., 801 N. Randolph Street, Arlington, Virginia 22203.

Regional Offices

Boston—Payroll Liaison Officer, HEW Personnel, Room 1503, JFK Federal Bldg., Boston, Massachusetts 02203.

New York—Payroll Liaison Officer, Room 937, 26 Federal Plaza, New York, New York 10007.

Philadelphia—Payroll Liaison Officer, Financial Management, P.O. Box 13716, Philadelphia, Pennsylvania 19101.

Atlanta—Payroll Liaison Officer, Room 404, 50 7th Street, N.E., Atlanta, Georgia 30323.

Chicago—Payroll Liaison Officer, Hew Personnel, 300 S. Wacker Drive, Chicago, Illinois 60606.

Dallas—Payroll Liaison Officer, Region VI Personnel Office, HEW, Main Tower Bldg., 1200 Main Street, Dallas, Texas 75202.

Kansas—Payroll Liaison Officer, Office of Regional Director, HEW, 601 East 12th Street, Kansas City, Missouri 64106.

Denver—Payroll Liaison Officer, Room 9019, Federal Office Bldg., 19th and Stout Street, Denver, Colorado 80202.

San Francisco—Payroll Liaison Officer, HEW Personnel, 50 Fulton Street, San Francisco, California 94102.

Seattle—Payroll Liaison Officer, Regional Personnel Office, Arcade Plaza Bldg., MS 627 1321 Second Avenue, Seattle, Washington 98101.

Cleveland—Payroll Liaison Officer, Room 500, 14600 Detroit Ave., Cleveland, Ohio 44107.

Data Operations Center, SSA—Payroll Liaison Officer, Data Operations Center, P.O. Box 2247, Albuquerque, New Mexico 87103.

U.S. Public Health Service Hospitals

San Francisco, PHS—Payroll Liaison Officer, USPHS Hospital, 15th and Lake Street, San Francisco, California 94118.

Seattle, PHS—Payroll Liaison Officer, USPHS Hospital, P.O. Box 3145, Seattle, Washington, 98114.

Staten Island, PHS—Payroll Liaison Officer, USPHS Hospital, Bay and Vanderbilt Street, Staten Island, New York 10304.

Saint Elizabeths, PHS—Payroll Liaison Officer, St. Elizabeths Hospital, Room 120, E. Bldg., 2700 Martin Luther King Ave., S.E., Washington, D.C. 20032.

Baltimore, PHS—Payroll Liaison Officer, USPHS Hospital, 3100 Wyman Park Drive, Baltimore, Maryland 21211.

Boston, PHS—Payroll Liaison Officer, USPHS Hospital, 77 Warren Street, Boston, Massachusetts 02135.

Carville, PHS—Payroll Liaison Officer, USPHS Hospital, Carville, Louisiana 70721.

Galveston, PHS—Payroll Liaison Officer, USPHS Hospital, 4400 Avenue N, Galveston, Texas 77550.

New Orleans, PHS—Payroll Liaison Officer, USPHS Hospital, 210 State Street, New Orleans, Louisiana 70118.

Norfolk, PHS—Payroll Liaison Officer, USPHS Hospital, 6500 Hampton Blvd. Norfolk, Virginia 23508.

Indian Health Service

Aberdeen—Payroll Liaison Officer, PHS Indian Health Service, Room 300, Citizens Bldg., Aberdeen, South Dakota 57401.

Albuquerque—Payroll Liaison Officer, Albuquerque Indian Health Service, Federal Office Bldg. and U.S. Courthouse, Room 4006, 500 Gold Avenue, Albuquerque, New Mexico 87101.

Anchorage—Payroll Liaison Officer, Alaska Native Medical Center, P.O. Box 7-741, Anchorage, Alaska 99501.

Billings—Payroll Liaison Officer, Indian Health Area Office, P.O. Box 2134, Billings, Montana 59103.

Oklahoma—Payroll Liaison Officer, Oklahoma City Area, Indian Health Service, 388 Old Post Office and Courthouse Bldg., Oklahoma City, Oklahoma 73102.

Saratoga—Payroll Liaison Officer, Indian Health Service, 1970 Main Street, Saratoga, Florida 33577.

Phoenix—Payroll Liaison Officer, Phoenix Area Indian Health, 801 E. Indian Medical Center, Phoenix, Arizona 85021.

Phoenix—Payroll Liaison Officer, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.

Tucson—Payroll Liaison Officer, IHS-HPSC, P.O. Box 11340, Tucson, Arizona 85734.

Public Health Service

CDC—Payroll Liaison Officer, Center for Disease Control, Financial

Management, 1600 Clifton Road, N.E., Atlanta, Georgia 30330.

NIH—Payroll Liaison Officer, National Institutes of Health, Room B1B, Bldg. 11, 9000 Rockville Pike, Bethesda, Maryland 20014.

FDA—Payroll Liaison Officer, FDA Payroll Liaison Section, Accounting Branch, CA–130, Room 11057, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

NIOSH (CDC)—Payroll Liaison Officer, HEW, CDC, NIOSH, Financial Mgmt. Branch, Parklawn Bldg., DANAC 3–32 F, 5600 Fishers Lane, Rockville, Maryland 20852.

NIH, NIEHS—Payroll Liaison Officer, National Insitute of Environmental Health Sciences, NIH, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

HSA, HRA, ASH—Payroll Liaison Officer, PHS, Room 1649–Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

ADAMHA—Payroll Liaison Officer, ADAMHA, Room 1399–Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

HEW HSA FHPS—Payroll Liaison Officer, Administrative Asst., 6525 Belcrest Road, West Hyattsville, Maryland 20782.

[FR Doc. 79-11021 Filed 4-9-79; 8:45 am]

BILLING CODE 4110-12-M

Privacy Act of 1974; Notification of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health, Education, and Welfare.

ACTION: Notification of new system of records: Record of Individuals Authorized Entry to Secured Electronic Data Processing (EDP) Area, HEW/SSA/OPO, 09–60–0210.

SUMMARY: SSA proposes to establish a new system of records under the Privacy Act. The proposed new system will maintain a list of individuals authorized entrance into SSA's secured EDP area which provides electronic access control and a higher level of security.

DATES: The Department filed a new system report for this system with the Director, Office of Management and Budget, the President of the Senate, and the Speaker of the House on April 3, 1979. The system will become effective 60 days after the new system filing date. The routine uses will become effective May 10, 1979, or at the end of the 60 day comment period (whichever is later), unless the Department receives comments which would result in a contrary determination.

ADDRESS: Address comments to Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. 20201. Individuals who wish may inspect comments received in Room 526F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

SUPPLEMENTARY INFORMATION: SSA proposes to establish this system of records in order to mainain a list of individuals authorized entrance into the secured EDP area of SSA. SSA will use the system of records to record these individuals' use of the entrances and exits in order to restrict the flow of traffic in the secured area as much as possible. SSA will also use data in this system for management information purposes when necessary to ensure the security of the EDP area. This system is an electronic system which will provide assurance that only authorized individuals with a legitimate need have access to the secured area.

SSA will collect and maintain only the minimum information necessary to identify these individuals. SSA must maintain the records in this system by individual identifier in order to evaluate the individuals' need for access and to be aware of which individuals may be attempting unlawful or subversive activities. Since SSA will use this system only to identify authorized individuals entering the secured area, we anticipate no untoward effect on the individuals' privacy or personal rights.

At one time, SSA felt that another system, the Employee Identification Card Files (Building Passes), HEW/SSA/OMA, 09–60–0038 covered the records in this system. However, after further study, SSA has determined that this system has evolved to a point that it is unique enough to stand as a separate system of records. In the interim, SSA will operate this system as a derivative of system 09–60–0038.

Only SSA EDP security personnel have access to the records in this system. SSA will maintain computerized records in a high security room within the secured area and hard copy records in a locked room. The Privacy Act prescribes specific penalties for the unauthorized disclosure of records from a system and these provisions have been explained to all individuals working with the records.

Dated: April 3, 1979.

Frederick M. Bohen,
Assistant Secretary for Management and Budget.

09–60–0210

SYSTEM NAME:

Record of Individuals Authorized Entry to Secured Electronic Data Processing (EPD), HEW/SSA/OPO.

SECURITY CLASSIFICATION (IF NONE, SO STATE):

None.

SYSTEM LOCATION:

Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF RECORDS IN THE SYSTEM:

Those individuals with a legitimate need who are authorized entry to the secured EDP area.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the name, badge number, identity of employer, access level, a unique five-digit identifying number, and a nine-digit number which is either the social security number or driver's license number for each individual authorized to enter the secured EDP area.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(e)(10).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is; (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SSA stores records in this system on magnetic tape and paper copy (Forms SSA–3304 and SSA–3309CD).

RETRIEVABILITY:

SSA retrieves magnetic tape records by name, badge number and the unique five-digit identifying number and paper records alphabetically by name.

SSA uses records in this system to restrict access to the secured EDP area. SSA will also use data in this system for management information purposes when necessary to ensure the security of the EDP area.

SAFEGUARDS:

SSA maintains computerized records in a high security room within the secured area and hard copy records in a locked room. Only authorized EDP security personnel have access to these records. SSA has established system security for this system in accordance with the National Bureau of Standards guidelines and the Department's ADP Systems manual, Part 6, ADP Systems Security Policy.

RETENTION AND DISPOSAL:

SSA retains records in this system for the duration of an individual's authority to enter the secured area. When an individual is no longer authorized, SSA erases magnetic tape records and destroys paper records by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

Any individual may present a request for information as to whether this system contains records pertaining to him or her by providing his or her social security number, name, signature, or other personal identification and referring to this system to Assistant Bureau Director, Administration, Bureau of Data Processing, 6401 Security Boulevard, Baltimore, Maryland 21235.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2).)

CONTESTING RECORDS PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record and specify the information they are contesting. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7).)

RECORD SOURCE CATEGORIES:

SSA obtains information in this system from forms SSA–3304 and SSA–3309CD which the individual prepares.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79–11019 Filed 4–9–79; 8:45 am]
BILLING CODE 4110–07–M

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration, Department of Health, Education, and Welfare.

ACTION: Notification of new system of records—Personal Identification Number File (PINFile) HEW/SSA/OPO, 09–60–0214.

SUMMARY: The Social Security Administration proposes to establish a new system of records. This new system will establish a personal identification number which will identify users of the SSA Telecommunications System (both Advance Record System (ARS) and SSA Data Acquisition and Response System (SSADARS)). The PINFile will require the issuance of numbers to all SSA telecommunication users. SSA will use the numbers to identify systems authorizers of all query and data transactions entered into the telecommunications system.

DATES: The Department filed a new system report with the Director, Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives on April 3, 1979. The system of records will become effective 60 days after the new system filing date. The routine uses will become effective May 10, 1979, or at the end of the 60-day waiting period (whichever is latest) unless the Department receives comments which would result in a contrary determination.

ADDRESS: Address comments to Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. 20209. Comments received will be available for inspection in Room 526F, Hubert Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Braithwaite, SSA Systems Security Officer, 6401 Security Boulevard, Baltimore, Maryland 21235.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) is managing and operating for its own use a nationwide telecommunications system called the SSA Data Acquisition and Response System (SSADARS). SSADARS provides the terminal equipment and the communications network for the electronic transmission of information related to SSA programs between SSA's Central Office in Baltimore, Maryland, and its field office locations. SSA has SSADARS terminal equipment installed at over 900 locations. In addition to SSADARS, SSA uses approximately 900 terminals of the General Services Administration Advance Record System (ARS). These terminals perform the function, as does the SSADARS, of providing for the electronic transmission of information between SSA's Central Office and its field office locations.

SSA proposes to establish this system to provide a more effective, efficient, and secure means of communicating claims and post-entitlement actions (and associated personal data) between its Central Office and its field office locations. SSA will issue a personal identification number (PIN) to all users of the SSA telecommunications system (both ARS and SSADARS). Initially, the PIN will identify systems authorizers of all query and data transactions entered into the system. SSA will not use the PIN to measure the quantity or quality of an employee's work.

The PIN assigned to an employee will be a number associated with a function code. The function code will reside in computer memory and will be transparent to the system user. Also, as a check on individual transaction access capability, SSA will use the PIN to establish a Retirement, Survivors, Disability, and Health Insurance (RSDHI) Transaction History. The RSDHI Transaction History will be the titles II and XVIII audit trails. In the future the PINFile will be able to distinguish between "accessors" and authorizers.

The PINFile will contain the following information on each user employee:

Time keeper number.
Name of employee (first three letters of last name).
Social security number.
Personal identification number.
Function code (associated to appropriate transaction profiles).

The PINFile is the basis for a system which will minimize risk of unauthorized access to SSA data files and personal data. SSA will limit access to data in the PINFile to regional, component, and systems security

officers and will monitor the PINFile by providing daily reports of all additions, deletion, and changes to the PINFile.

Since SSA has established the PINFile in accordance with the principles and requirements of the Privacy Act, we anticipate no untoward effect on the privacy or other personal or property rights of the individuals involved.

Dated: April 3, 1979.

Frederick M. Bohen,
Assistant Secretary for Management and Budget.

09-60-0214

SYSTEM NAME:

Personal Identification Number File (PINFile) HEW/SSA/OPO.

SECURITY CLASSIFICATION (IF NONE, SO STATE):

None.

LOCATION:

Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Social Security Administration (SSA) employees, some Disability Determination Services (DDS) employees, and Health Care Financing Administration (HCFA) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Timekeeper number, name of employee (first three letters of last name), social security number, personal indentification number for validation purposes, and function code.

AUTHORITY:

Section 205(a) of the Social Security; 5 U.S.C. 552a(e)(10). 552a(e)(10).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made:

(1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) In the event of litigation where one of the parties is: (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SSA maintains records in the PINFile on magnetic tape reels.

RETRIEVABILITY:

SSA retrieves records from the PINFile by name, social security number, personal indentification number, and timekeeper number.

SSA uses the PINFile to limit access to SSA information resources to specific individuals to a predefined number of transactions.

SAFEGUARDS:

The PINFile is the basis for a system which minimizes the risk of unauthorized access to SSA data files and personal data. The PINFile will limit access to all SSA data files which can be accessed via the SSA telecommunications system. Steps to minimize the unauthorized use of the PINFile include: (1) limiting access to data on file to regional, component, and systems security officers; and (2) monitoring additions, deletions, and changes to the PINFile through daily reports.

RETENTION AND DISPOSAL:

Magnetic tape—retained 30 days and erased.

SYSTEM MANAGER AND ADDRESS (INCLUDE ZIP CODE):

SSA Systems Security Officer, Social Security Administration, 6401 Security Boulevard, Room 1-Z-25 Operations Building, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURES:

To find out whether this system has a record about you, write the system manager at the above address and provide your personal identification number.

RECORD ACCESS PROCEDURES:

Same as above. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR Section 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Same as above. Also, requesters should specify the information they are contesting. (These contesting procedurs are in accordance with Department regulations (45 CFR Section 5b.7).)

RECORD SOURCE CATEGORIES:

SSA obtains information in the PINFile from the individuals, their supervisors, and from SSA time and attendance file.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-11020 Filed 4-9-79; 8:45 am]
BILLING CODE 4110-07-M

Privacy Act of 1974; Routines Uses and Minor Technical Amendments to Notice of System of Records

AGENCY: Social Security Administation, Department of Health, Education, and Welfare.

ACTION: Notification of new routine uses and minor technical amendments to the system of records notice State Data Exchange (SDX) System, HEW/SSA/OPO, 09-60-0114.

SUMMARY: The Social Security Administration (SSA) proposes to establish two additional new routine uses applicable to the system of records entitled State Data Exchange (SDX) System under the Privacy Act. SSA also proposes certain minor technical amendments to the system of records notice, primarily clarifying revisions to the categories of individuals, the categories of records, and the routine uses sections which will make the notice accurate and complete.

DATES: The routine uses will become effective as proposed without further notice May 10, 1979, unless the Department receives comments on or before May 10, 1979, which would result in a contrary determination.

ADDRESS: Address comments to Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue, SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

Director, Office of Assistance Programs Instructions, 6401 Security Boulevard, Baltimore, Maryland 21235.

SUPPLEMENTARY INFORMATION: The Federal supplemental security income program provides a minimum income level for aged, blind, or disabled individuals who lack sufficient income and resources to maintain a standard of living at the established minimum

income level. This program, which the Social Security Administration adminsters, provides for mandatory and optional State supplementation of the Federal payment.

The State Data Exchange (SDX) system of records enables the States to administer the Medicaid program and assists in the administration of the supplemental security income program. The new routine uses proposed for the SDX will (1) enable the States to assist the Social Security Administration in maintaining its records, by the States verifying the correctness of a receipient's income posted to SSA records, and (2) enable the States which have an Interim Assistance Reimbursement agreement with the Secretary to carry out their functions with respect to Interim Assistance by providing eligibility information the States need to compute the amount of reimbursement due them from the recipient's first supplemental security income check.

The minor technical amendments to the categories of individuals, the categories of records, and the routine uses sections of the notice are corrections rather than alternations which make the notice accurate and complete.

The amount of data SSA maintains in the SDX represents the minimum necessary to perform the SDX's functions. SSA only makes disclosures from the SDX in accordance with the Privacy Act and the routine use statements published with the SDX. Therefore, we anticipate no unwarranted or untoward effects on the privacy or other personal or property rights of the individuals involved.

SSA maintains data in the SDX on magnetic tape, mircrofilm, and paper listing. SSA maintains these records in a secured enclosure attended by security guards. Anyone entering or leaving this area must have security badges issued to authorized personnel only. SSA also protects records released to the respective States according to agreements made between SSA and the States regarding confidentiality, use and redisclosure.

The following system of records notice contains the proposed new routine uses and minor technical amendments as indicated above.

Dated: April 2, 1979.

Frederick M. Bohen,
Assistant Secretary for Management and Budget.

09-60-0114

SYSTEM NAME:

State Data Exchange System (Supplemental Security Income) HEW SSA-OPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

State Data Exchange files are maintained by all State welfare agencies (see Appendix D). In addition, backup files (magnetic tape) are maintained for a limited period of time (90 days) within the Bureau of Data Processing, 6401 Security Boulevard, Baltimore, Maryland 21235. Printed copies of the State Data Exchange record are located in some district and branch offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The State Data Exchange file contains a record for each *individual* who has applied for supplemental security income payments *and for each essential person associated with a supplemental security income recipient.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The State Data Exchange file for each State contains data regarding eligibility, medicaid eligibility, eligibility for other benefits, alcoholism and drug addiction data *(disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 4582)*, income data, resources, payment amounts and living arrangements for all persons who have applied for supplemental security income payments who reside in that particular State.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1611, 1612, 1615, 1616, 1631(e), 1633, and 1634 of Title XVI of the Social Security Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles.

b. To identify title XVI eligibiles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls.

c. To enable States which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

d. To enable States which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplemental payments.

e. To enable the States of California, Nevada, and New York to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program.

f. To enable the States to assist in the effective and efficient administration of the supplemental security income program.

g. To enable those States which have an agreement with the Secretary, to carry out their functions with respect to Interim Assistance Reimbursement per Section 1631(g) of the Social Security Act.

h. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. In the event of litigation where one the parties is (1) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (2) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (3) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, microfilm, paper listings.

RETRIEVABILITY:

Magnetic tape, microfilm and paper listings are all indexed according to social security number, State welfare idenfication number, category (aged, blind or disabled), county, or surname in order to supply information to the States in accordance with program administration agreements, and for the Social Security Administration

management purposes. *The State Data Exchange file consists of eligibility and payment data obtained by the Social Security Administration in the administration of the supplemental security income program. Social security district and branch offices uses the printed copy of the State Data Exchange file for reference purposes and answering inquiries.*

SAFEGUARDS:

SSA protects the records according to agreements made between SSA and the respective States regarding confidentiality, use, and redisclosure. SSA personnel may access these records only on a need-to-know basis.

RETENTION AND DISPOSAL:

Instructions provided to the States call for duplication by the States of files provided by the Social Security Administration. The period of retention of State Data Exchange files by the States is determined by the respective States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Supplemental Security Income, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

Social Security District Offices and Branch Offices (see Appendix F); or contact State official (see Appendix D). An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department Regulations (45 CFR, Section 5b.6) **Federal Register**, October 8, 1975, page 47411.).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR, Section 5b.5(a)(2)) **Federal Register**, October 8, 1975, page 47410.).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR, Section 5b.7) **Federal Register**, October 8, 1975, page 47411.).

RECORD SOURCE CATEGORIES:

The information contained on the State Data Exchange files is derived from data on the supplemental security income master record which is obtained for the most part from applicants for supplemental security income payments. Additionally, the various States provide a limited amount of data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-11018 Filed 4-9-79; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Application for Temporary Withdrawal and Proposed Permanent Withdrawal

The Bureau of Land Management, Department of the Interior, has filed application, Serial No. A 10898, for withdrawal of the Federally-owned mineral estate underlying the lands described below from location and entry under the general mining laws.

The application was filed in accordance with the Surface Mining Control and Reclamation Act of 1977 upon request of the Governor of the State of Arizona.

The land is located in the vicinity of the Town of Wickenburg, Arizona. The surface is privately owned; the minerals are reserved to the United States. This application for temporary withdrawal closes the area to mining location and entry during the time required for the Bureau of Land Management to review the area and interests involved, and prepare recommendations as to whether such lands or interests therein should be designated as unsuitable for all or certain types of mining operations. A detailed statement will be prepared as to the potential mineral resources of the area, the demand for such mineral resources, and the impact of such designation, or absence thereof, on the environment, economy, and supply of such mineral resources. Upon completion of the review and statement, the Secretary's determination as to the suitability of mining operations on the lands will be published in the Federal Register. If designated unsuitable, the Federally-owned mineral estate will be permanently withdrawn from appropriation under the general mining laws, but not the mineral leasing laws, by Public Land Order.

On or before July 9, 1979, all persons who wish to submit comments or suggestions regarding the proposed designation and permanent withdrawal may present their views in writing to Robert O. Buffington, State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073. Such communications will be taken into consideration during the preparation of the detailed statement.

Therefore, pursuant to the authority vested in the Secretary of the Interior by the Act of August 3, 1977, 91 Stat. 515; 30 U.S.C. 1281, it is ordered as follows:

Subject to valid existing rights, the Federally-owned mineral estate underlying the following described lands is temporarily segregated from appropriation under the general mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, for a period of two years from the date of publication of this notice.

Gila and Salt River Meridian, Arizona,

T. 7 N., R. 4 W.,
  Sec. 17, N½, E½SW¼, SE¼;
  Sec. 20, E½SE¼.
T. 7 N., R. 5 W.,
  Sec. 3, all;
  Sec. 4, E½NE¼, NE¼SE¼;
  Sec. 8, N½, N½SW¼, NW¼SE¼;
  Sec. 9, NE¼, E½NW¼, NW¼NW¼, NE¼SE¼;
  Sec. 10, all;
  Sec. 11, NW¼NE¼, W½;
  Sec. 17, all.
T. 8 N., R. 5 W.,
  Sec. 17, all;
  Sec. 18, all;
  Sec. 19, all;
  Sec. 20, all;
  Sec. 21, all;
  Sec. 27, SW¼NW¼, NW¼SW¼;
  Sec. 28, all;
  Sec. 29, all;
  Sec. 30, all;
  Sec. 33, all;
  Sec. 34, all;
  Sec. 35, W½SW¼, SE¼SW¼.

The areas described aggregate 10,400 acres of Federally-owned mineral estate in Maricopa and Yavapai Counties, Arizona.

Dated: March 28, 1979.

Robert O. Buffington,

State Director.

[Serial No. A 10898]

[FR Doc. 79-10949 Filed 4-9-79; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Supplements to Selected Management Framework Plans Applying Draft Criteria of Unsuitability for Coal Management; Status

AGENCY: Bureau of Land Management (BLM), U.S. Department of the Interior.

ACTION: Notice of Status.

DATE: Comments may be submitted until May 15, 1979.

ADDRESS: Comments should be sent to: Director, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Director, Office of Coal Management, 202–343–6821 or Robert A. Jones, Chief, Division of Environmental and Planning Coordination, 202–343–5682.

I. Background

The BLM is preparing supplements to certain management framework plans (MFP), applying interim criteria for the identification of lands as unsuitable for all or certain types of coal mining operations. In a Notice published on December 8, 1978, (43 FR 57662–57670) the BLM explained why the supplements were being prepared, what standards should be used, and how the public would participate. This notice explains what steps have been taken since the December 8, 1978, notice.

II. Status of MFP Supplements

Applications of the interim unsuitability criteria have now been conducted in ten planning areas. In nine of these areas MFPs had already been completed and draft supplements to those MFPs have been prepared in accordance with Instruction Memorandum 79–76 as included in the December 8, 1978, notice. A new land use plan is currently in preparation for the other area and preliminary application of the draft criteria has been completed in conjunction with the planning process.

Public meetings, presenting the draft supplements containing the preliminary results of the application process to interested state agencies and members of the public, have been or will be held in each of the planning areas, and will be completed by April 13, 1979.

The draft supplements, procedures followed in preparing them, and the public comments on them will be evaluated by the Bureau of Land Management and a general report on the unsuitability criterion application process for all ten areas will be prepared by the agency. The report will contain a summary of the results of the application of each criterion, an analysis of the potential economic effects of the application of unsuitability criteria based on those results, and recommendations to the Secretary of the Interior concerning both the substance of, and application procedures for, the criteria. The report will be completed on or about May 1 and will be submitted to the Office of Coal Leasing, Planning and Coordination. The report, together with the comments received on the criteria provisions of the proposed coal management regulations published March 18, 1979, (43 FR 16800–16845), comments on the criteria discussion in the final programmatic environmental statement due to be published on April 30, and comments on the notice will be employed by the Coal Leasing Office to prepare documentation on the unsuitability criteria for use by the Secretary of the Interior in the coal management program decisions scheduled for June 1.

Change three to the Instruction Memorandum (IM) 79–76, attached to this notice as Appendix A, informed the State Directors the unsuitability criteria would be approved in their final form as part of the Secretary's June 1 decision. Changes which would result from any modifications to the unsuitability criteria are to be incorporated in the MFP supplements prior to their final approval. Hence the May 1 deadline in IM 79–76 for completion of the MFP supplements has been postponed until after the Secretary's decision, or later than June 1, 1979.

Public comment on this notice is welcome. Comments should be sent to: Director, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240.

The draft MFP supplements have been made available to the public on request. Anyone desiring further information on the results of preliminary applications of the draft unsuitability criteria or copies of the initial reports may contact the following State Directors:

Dale Andrus, State Director Colorado, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202. Telephone (303) 837–4325.

Lowell J. Udy, State Director, Eastern States, 7981 Eastern Avenue, Silver Spring, Maryland 20910. Telephone (301) 427–7500.

Edwin Zaidlicz, State Director Montana, Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana 59107. Telephone (406) 657–6461.

Paul L. Howard, State Director Utah, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. Telephone (801) 524–5311.

Daniel P. Baker, State Director Wyoming, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001. Telephone (307) 778–2220.

The general report of the BLM on the criteria application process will be made available to the public by notice in the **Federal Register.**

Dated: April 5, 1979.

Arnold E. Petty,
Acting Associate Director, Bureau of Land Management.

United States Department of the Interior,

Bureau of Land Management, Washington, D.C.

March 8, 1979.

Instruction Memorandum No. 79–76, Change 3.

Expires 9/30/80.

To: SDs-Colorado, Montana, New Mexico, Utah, Wyoming; and D–ESO.

From: Associate Director.

Subject: Coal-Related Land-Use Planning: Unsuitability Criteria—Instructions for Completion of MFP Supplements.

Several States have asked questions about the coordination between the finalization of Departmental unsuitability criteria and the completion of MFP supplements now being prepared.

We have discussed this concern with OCLPC and have developed the following guidance:

1. When conducting public meetings be sure you make these points:

a. These are proposals based on the draft criteria.

b. One of the purposes of this spring's work is to test and evaluate the draft criteria.

c. The final MFP supplements, which will not be approved until *after* June 1, will be made consistent with final criteria as decided by the Secretary.

d. If requested by any person who may be adversely affected by the plan, a hearing will be held as required by the Coal Leasing Amendments Act and 43 CFR 3525.11 (c) and (d), before the supplement is approved.

Note.—Instruction Memorandum 79–289, dated March 12, 1979, provided interpretation for criteria 9 and 15.

2. Please submit your evaluation of the draft criteria as soon as possible, in accordance with our memorandum of February 28, 1979 (Instruction Memorandum 79–76, Change 1), so that your experience can be used in advising the Secretary of any appropriate changes needed.

3. You will be advised of any change in the criteria as soon as the Secretary reaches a decision, which will be about June 1.

4. Immediately after we have advised you of any change in the criteria, you are to make any necessary changes in your documents and complete your MFP supplements. We

understand that this means your printed supplements may not be available until late June and this modifies the May 1 deadline in IM 79–76. If you receive a request for a hearing, notify this office immediately indicating the basis for the request and we will provide appropriate guidance.

5. If, during the completion of your MFP supplements, you are contacted by a group (industrial, environmental, or other), asking to see your data and offering data and/or assistance, you are to welcome their input and show them your data.

Arnold E. Petty,
Acting Associate Director.
[FR Doc. 79–11102 Filed 4–9–79; 8:45 am]
BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Lloyd R. Ure, Rt. 1, Granton, Wisconsin; PRT 2–3847.

The applicant requests a permit to purchase in interstate commerce two (2) white-eared pheasants (*Crossoptilon crossoptilon*) and six (6) Elliot's pheasants (*Syrmaticus ellioti*) from Charles Sivelle, Dix Hills, New York, for exhibition and enhancement of propagation.

Applicant: William H. Meadons, 19637 Mariposa, Perris, California; PRT 2–3943.

The applicant requests a permit to purchase in interstate commerce two (2) clouded leopards (*Neofelis nebulosa*) for exhibition and enhancement of propagation.

Applicant: New York Zoological Society (Bronx Zoo), Bronx, New York; PRT 2–4017.

The applicant requests a permit to import one (1) immature white-naped crane (*Grus vipio*) from the Hong Kong Zoological and Botanical Gardens for exhibition and enhancement of propagation.

Applicant: San Diego Zoological Garden, San Diego, California; PRT 2–3954.

The applicant requests a permit to import one (1) female Siamang gibbon (*Symphalangus syndactylus*) from the Jakarta Zoological Garden, Jakarta, Indonesia, for exhibition and enhancement of propagation.

Applicant: Benjamin S. Russell, 64990 Hunnell Rd., Bend, Oregon; PRT 2–3992.

The applicant requests a permit to purchase in interstate commerce two white-eared pheasants from Charles Sivelle, Dix Hills, New York, for exhibition and enhancement of propagation.

Applicant: The Zoo of Arkansas, No. 1 Jonesboro Road, Little Rock, Arkansas; PRT 2–4026.

The applicant requests a permit to purchase in interstate commerce one cotton-topped tamarin (*Saquinus oedipus*) from the Utica Zoo, New York, for exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with the applications 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.

Interested persons may comment on these applications on or before May 10, 1979, by submitting written data, views, or arguments to the Director at the above address.

Dated: April 5, 1979.

Fred L. Bolwahnn,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.
[FR Doc. 79–11026 Filed 4–9–79; 8:45 am]
BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: International Animal Exchange, Inc., 570 Livernois, Ferndale, Michigan 48220.

The applicant requests a permit to import two tigers (*Panthera tigris altaica*) from the Calgary Zoo in Canada. These tigers will eventually be re-exported to Japan for 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 2–4057. 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 10, 1979. Please refer to the file number when submitting comments.

Dated: April 5, 1979.

Fred L. Bolwahnn,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.
[FR Doc. 79–11027 Filed 4–9–79; 8:45 am]
BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Birmingham Zoo, 2630 Cahaba Road, Brimingham, Alabama 35223.

The applicant requests a permit to buy one pair of nene geese (*Branta sandvicensis*) in the course of a commercial activity from the Audubon Park Zoo, New Orleans, Louisiana, for 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 writting to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–4013. 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 10, 1979. Please refer to the file number when submitting comments.

Dated: April 5, 1979.

Larry La Rochelle,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.
[FR Doc. 79–11028 Filed 4–9–79; 8:45 am]
BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Donald Lessard, 104 S. Villa Louis Road, Prairie du Chien, Wisconsin 53821.

The applicant requests a permit to survey clam beds on the Mississippi River to ascertain the presence of Higgin's eye pearly mussels (*Lampsilis higginsi*).

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–3914. 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 10, 1979. Please refer to the file number when submitting comments.

Dated: April 2, 1979.

Donald C. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11029 Filed 4–9–79; 8:45 am]

BILLING CODE 4310–55–M

Issuance of Permit for Marine Mammals

On January 24, 1979, a Notice was published in the **Federal Register** (44 FR 79–2350), that an application had been filed with the Fish and Wildlife Service by Charles A. Repenning, Branch of Paleontology and Stratigraphy, U.S. Geological Survey, Menlo Park, California 94025, for a permit to import two polar bear (*Ursus martimus*) skulls for scientific research.

Notice is hereby given that on March 7, 1979, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued a permit (PRT 2–3521) to import two polar bear skulls, subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: April 25, 1979.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79–11025 Filed 4–9–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Application

Applicant: Warren J. Mack, 600 E. River Rd., Rochester, New York 14623.

The permittee wishes to renew his Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, all species of pheasants listed in 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information within the permit file 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 permit file number is PRT 2–385. 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 10, 1979. Please refer to the file number when submitting comments.

Dated: April 5, 1979.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11022 Filed 4–9–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; 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 indicated species 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 10, 1979, by submitting written data, views, or arguments to the Director at the above address.

Applicant: Edward R. Benhardt, P.O. Box 311, Reardan, Washington. PRT 2–4048. Species: all T(C/P) pheasants.

Applicant: Rocky Mountain Studio Animals, 33601 Stransky Rd., Evergreen, Colorado. PRT 2–4029. Species: all T(C/P) cats.

Applicant: Charles J. August, 102 Suffield St., Windsor Lock, Connecticut. PRT 2–4027. Species: All T(C/P) pheasants.

Applicant: Franklin L. Brown, 723 Weaver Dr., Blakely, Georgia. PRT 2–4015. Species: all T(C/P) pheasants.

Applicant: Rio Grande Zoological Park, 903 Tenth St., S.W., Albuquerque, New Mexico. PRT 2–4034. Species: all T(C/P) mammals.

Applicant: Jeff Perry, 4425 Abbe Road, Lorain, Ohio. PRT 2–4035. Species: all T(C/P) pheasants.

Applicant: Victor M. Huddleston, 17165 Old Jamestown Rd., Florissant, Missouri. PRT 2–4242. Species: Leopard *Panthera pardus.*

Applicant: Thomas Mendes, 46–306 Hololio Place, Kaneohe, Hawaii. PRT 2–3624. Species: all T(C/P) pheasants.

Please refer to the individual applicants and the appropriately assigned PRT 2–filed number when submitting comments.

Dated: April 5, 1979.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office U.S. Fish and Wildlife Service.

[FR Doc. 79–11023 Filed 4–9–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Application

Applicant: Leland B. Hayes, 1707 SW Salmon, Redmond, Oregon 97756.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed at 50 CFR Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business 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 2–3733. 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 10, 1979. Please refer to the file number when submitting comments.

Dated: April 5, 1979.

Fred L. Balwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office. U.S. Fish and Wildlife Service.

[FR Doc. 79–11024 Filed 4–9–79; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

APPLICANT: Keith M. Schreiner, Alaska Area Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

The applicant requests a permit to take (capture) American and arctic peregrine falcons (*Falco peregrinus anatuma* and *F. p. tundrius*) for banding and release for scientific purposes.

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 2–4046. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by May 10, 1979. Please refer to the file number when submitting comments.

Dated: April 2, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-11030 Filed 4-9-79; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before March 30, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by April 20, 1979.

William J. Murtagh,

Keeper of the National Register.

ALASKA

Fairbanks Division

Chatanika, *Chatanika Gold Camp,* AK 6

CALIFORNIA

Lake County

Anderson Springs vicinity, *Archeological Site Number CA–LAK–711*

Los Angeles County

Los Angeles, *Britt, Eugene W., House,* 2141 W. Adams Blvd.

San Francisco County

San Francisco, *Audiffred Building,* 1–21 Mission St.
San Francisco, *Mish House,* 1153 Oak St.

Santa Clara County

Cupertino vicinity, *Picchetti Brothers Winery,* SW of Cupertino at 13100 Montebello Rd.

Santa Cruz County

Santa Cruz, *Hotel Metropole,* 1111 Pacific Ave.

CONNECTICUT

Hartford County

East Hartford, *Brewer, Selden, House,* 137 High St.

New London County

East Lyme, *Smith, Samuel, House,* 82 Plants Dam Rd.
Stonington, *Stanton, Robert, House (Davis Homestead)* Green Haven Rd.

Windham County

Windham, *Windham Center Historic District,* CT 14 and CT 203

GEORGIA

Clarke County

Athens, *Thomas-Carithers House,* 530 S. Milledge Ave.

Dooly County

Vienna, *Stovall-George-Woodward House,* 30 Union St.

IDAHO

Bonneville County

Idaho Falls, *U.S. Post Office,* 581 Park Ave.

Jerome County

Hunt, *Minidoka Relocation Center,* Hunt Rd.

ILLINOIS

McHenry County

Woodstock vicinity, *Stickney, George, House,* NE of Woodstock at 1904 Cherry Valley Rd.
Woodstock vicinity, *Terwilliger House,* E of Woodstock at Mason Hill and Cherry Valley Rds.

Will County

Joliet, *Henry, Jacob H., House,* 20 S. Eastern Ave.

IOWA

Polk County

Des Moines, *Polk County Courthouse,* 6th and Mulberry Sts.

MONTANA

Powell County

Deer Lodge, *Kohrs, William K., Free Memorial Library,* 5th St. and Missouri Ave.

NEBRASKA

Sheridan County

Antioch, *Antioch Potash Plants,* NE 2

NEVADA

Carson City (independent city)

Ormsby-Rosser House, 304 S. Minnesota St.

Coos County

Berlin, *Holy Resurrection Orthodox Church,* Petrograd St.
Berlin, *St. Anne Church,* 58 Church St.

Rockingham County

Raymond, *Raymond Boston and Maine,* Railroad Depot, Main St.

Sullivan County

Claremont, *Dexter, David, House,* Dexter Heights.
Claremont, *Rossiter, William, House,* 11 Mulberry St.
Goshen vicinity, *Gunnison, Capt. John, House,* E of Goshen on Goshen Center Rd.

NEW MEXICO

Eddy County

Artesia, *Robert, Sallie Chisum, House,* 801 W. Texas St.

Otero County

Cloudcroft vicinity, *Mexican Canyon Trestle,* NW of Cloudcroft off NM 83
La Luz vicinity, *La Luz Pottery Factory,* 2 mi. (3.2 km) E of La Luz

Rio Arriba County

Llaves vicinity, *Nogales Cliff House,* S of Llaves off NM 112

NEW YORK

Columbia County

Hudson River Lighthouses Thematic Group (also in Green, New York, Rockland, Ulster and Westchester Counties)

PENNSYLVANIA

Luzerne County

Wilkes-Barre, *Stegmaier Brewery,* roughly bounded by Coal, Welles, Market, a Lincoln, and Baltimore Sts.

TENNESSEE

Hardeman County

Bolivar, *Bolivar Historic District,* irregular pattern along Main St. and Bills Sts.

Shelby County

Memphis, *Leath, Porter, Children's Center,* 850 N. Manassas St.
Memphis, *Memphis Merchants Exchange,* 2nd St. and Madison Ave.

TEXAS

Cass County

Linden, *Cass County Courthouse,* Public Sq.

Jasper County

Jasper vicinity, *Smyth, Andrew, House,* W of Jasper

VIRGINIA

Augusta County

Mossy Creek vicinity, *Miller, Hannah, House,* N of Mossy Creek off VA 747
Mossy Creek vicinity, *Miller, Henry, House,* E of Mossy Creek on VA 42

Buena Vista (independent city)

Old Courthouse, 2110 Magnolia Ave.

Clarke County

Boyce vicinity, *Meadow, The (Huntingdon)* N of Boyce

Danville (independent city)

Penn-Wyatt House, 862 Main St.

Fairfax County

Colchester, *Fairfax Arms*, 10712 Old Colchester Rd.

Harrisburg (independent city)

Wilton, Joshua, House, 412 S. Main St.

Lexington (independent city)

Lexington Presbyterian Church, Main and Nelson Sts.

Lunenburg County

Kenbridge vicinity, *Flat Rock*, SW of Kenbridge on VA 655

Mecklenburg County

Clarksville, *Moss Tobacco Factory*, Main and 7th Sts.

Norfolk (independent city)

St. Mary's Church, 232 Chapel St.

Pittsylvania County

Danville vicinity, *Dan's Hill*, 4 mi. (6.4 km) W of Danville

Rappahannock County

Washington vicinity, *Mount Salem Baptist Meetinghouse*, SE of Washington on VA 626

Richmond (independent city)

Winston, Joseph P., House, 101–103 E. Grace St.

Rockbridge County

Buena Vista vicinity, *Glen Maury*, W of Buena Vista
Lexington vicinity, *Stone House (Zachariah Johnston House)* W of Lexington

Staunton (independent city)

Hilltop, Mary Baldwin College campus
Kable House, 310 Prospect St.
Miller, C. W., House, 210 N. New St.
National Valley Bank, 12–14 W. Beverley St.
Oaks, The, 437 E. Beverley St.
Rose Terrace, 150 N. Market St.

WASHINGTON

Clark County

Vancouver, Vancouver Barracks, I–5

King County

Seattle, *Federal Office Building*, 909 1st Ave.

Whatcom County

Bellingham, *U.S. Post Office and Courthouse*, 104 W. Magnolia St.

WEST VIRGINIA

Brooke County

Bethany, *Delta Tau Delta Founders House*, 211 Main St.

Gilmer County

Glenville, vicinity, *Job's Temple*, W of Glenville on WV 5

Greenbrier County

Lewisburg vicinity, *Tuscawilla (Knight Farm)* S of Lewisburg off U.S. 219

Hampshire County

Romney, *Literary Hall*, Main and High Sts.

Jackson County

Staats Mill, *Staats Mill Covered Bridge*, SR 40

Marion County

Fairmont, *Marion County Courthouse and Sheriff's House*, Adams and Jefferson Sts.

Mercer County

Bluefield, *Municipal Building*, 514 Bland St.

Mineral County

Ridgeville, *Vandiver-Trout-Clause House*, U.S. 50/220

Ohio County

Triadelphia vicinity, *Stewart, David, Farm (White, Mrs. Robert, House)* SE of Triadelphia off SR 43

Taylor County

Webster, *Jarvis, Anna, House*, U.S. 119/250

Wood County

Parkersburg, *Oakland (James M. Stephenson House)* 1131 7th St.

WISCONSIN

Buffalo County

Alma, *Laue, Frederick, House*, 1111 S. Main St.
Alma, *Tester and Polin General Merchandise Store*, 215 N. Main St.

Green County

Monroe, *Bintliff, Gen. James, House*, 723 18th Ave.

[FR Doc. 79-10539 Filed 4-9-79; 8:45 am]

BILLING CODE 4310-03-M

OFFICE OF PERSONNEL MANAGEMENT

Department of the Army; Title Change in Noncareer Executive Assignment

By Notice of February 14, 1975, F.R. Doc. 75–4221, the Civil Service Commission authorized the Department of the Army to make a change in title for the position of Principal Deputy Assistant Secretary of the Army (Financial Management), Office, Assistant Secretary of the Army (FM), Office, Secretary of the Army, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Principal Deputy Assistant Secretary of the Army (IL&FM), Office, Assistant Secretary of Army (IL&FM), Office, Secretary of the Army.

Office of Personnel Management.

Beverly M. Jones,

Issuance Systems Manager.

[FR Doc. 79-10738 Filed 4-9-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Correction

In Fr Doc. 79–9657 appearing at page 19545 in the issue for Tuesday, April 3, 1979, make the following correction: On Page 19550, in the middle column, after the listing for Wisconsin, the paragraph explaining listings for Hawaii, Missouri, and Virginia should be deleted and the following paragraph should be substituted in lieu thereof:

"THE FOLLOWING PROPERTIES WERE OMITTED FROM THE LISTING IN THE "FEDERAL REGISTER," PART II, FEBRUARY 6, 1979.

BILLING CODE 1505-1-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Municipal and Industrial System—Bonneville Unit, Central Valley Project, Utah; Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed water resource project that would develop water for municipal and industrial use and for irrigation in north-central Utah. The project would also generate hydroelectric power, provide flood control, improve recreation opportunities and some esthetic values, and include measures to mitigate fishery and wildlife losses. Written comments may be submitted to the Regional Director (address below) within 45 days of this notice.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, DC 20240, Telephone (202) 343–9247.

Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, DC 20240, Telephone (202) 343–4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, CO 80225, Telephone (303) 234–3006.

Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, UT 84147, Telephone (801) 524–5404.

Central Utah Projects Office, Bureau of Reclamation, P.O. Box 1338, Provo, UT 84601, Telephone (801) 584–0222.

Single copies of the draft statement may be obtained on request to the

Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: April 5, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[(INT DES) 79-18]

[FR Doc. 79-10922 Filed 4-9-79; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Meeting of the Business Research Advisory Council's Committee on Price Indexes

The BRAC Committee on Price Indexes will meet on Tuesday, May 15, 1979, at 10:00 a.m., in Room 4454 of the General Accounting Office Building, 441 G Street, N.W., Washington, D.C. The agenda for the meeting is as follows:

1. Status Report on the Consumer Price Index Program.
2. Developments in the Family Budget Program.
3. Producer Price Index Revision Progress Report.
4. Current Developments in the International Price Program.
5. Committee Reaction to the Chartbook on Prices, Wages, and Productivity.
6. Other Business.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 523-1559.

Signed at Washington, D.C., this 4th day of April 1979.

Janet L. Norwood,

Acting Commissioner of Labor Statistics.

[FR Doc. 79-11083 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-24-M

Meeting of the Business Research Advisory Council's Committee on Wages and Industrial Relations

The BRAC Committee on Wages and Industrial Relations will meet at 2 p.m., Tuesday, May 15, 1979, at the General Accounting Office Building in Room 4454, 441 G Street, N.W., Washington, D.C. The agenda for the meeting is as follows:

1. Work in Progress.
2. WIR FY 1980 Budget Experience.
3. WIR Subcommittee on Long-Range Planning Report.
4. Demographic Characteristics of Union Members.
5. WIR Relations with Council on Wage and Price Stability.
6. Other Business.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 523-1559.

Signed at Washington, D.C. this 4th day of April 1979.

Janet L. Norwood,

Acting Commissioner of Labor Statistics.

[FR Doc. 79-11084 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-24-M

DEPARTMENT OF LABOR

Employment and Training Adminstration

Indian and Native American Programs: Prime Sponsors Under the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to inform the public of the allocations of Fiscal Year 1979 funds to Indian and Native American Prime sponsors of employment and training programs funded under the Comprehensive Employment and Taining Act (CETA).

FOR FURTHER INFORMATION CONTACT: Herman E. Narcho, Policy, Program Design, and Administration, Division of Indian and Native American Programs, Office of National Programs, 601 D Street, NW., Room 6414, Washington, D.C. 20213. Telephone (202) 376-7279.

SUPPLEMENTARY INFORMATION: Indian and Native American programs under the Comprehensive Employment and Training Act, are administrered nationally by the Division of Indian and Native American Programs (DINAP), Office of National Programs, Employment and Training Administration, Department of Labor 601 D Street, NW., Room 6402, Washington, D.C. 20213, telephone (202) 376-6102. Mr. Alexander S. MacNabb is the Director, DINAP.

Attached is a listing of prime sponsors and their allocations.

Signed at Washington, D.C., this 14th day of November 1978.

Alexander S. MacNabb,

Director, Division of Indian and Native American programs Office of National Programs.

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management

[Fiscal Year 1979 Native Americans Allocations]

Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Eddie Leon Tullis, Chairman, Creek Nation East of Mississippi Incorporated, Route 3. Box 243A, Atmore, Ala., 36502 Grant No.: 99-9-648-30-1	184,519	0	0	0	0	184,519
Mr. Byron Mallot, President, Alaska Federation of Natives, Inc., 550 W Eighth Avenue, Anchorage. Alaska, 99501. Grant No.: 99-9-853-30-2	178,215	450,241	621,616	107,392	18,952	1,376,416
Mr. Patrick Pletnikoff, Executive Director, Aleutian/Pribilof Islands Association, 1689 C Street, Anchorage. Alaska, 99501. Grant No.: 99-9-117-30-3	147,762	150,080	207,206	35,797	6,317	547,162
Mr. Fred Angason, Executive Director, Bristol Bay Native Association, P.O. Box 179, Dillingham, Alaska, 99576. Grant No.: 99-9-116-30-4	244,491	309,762	427,667	73,885	13,039	1,068,844
Mr. Jake Lestenkof, Executive Director, Cook Inlet Native Association, 1057 West Fireweed Lane, Anchorage, Alaska, 99503. Grant No.: 99-9-113-30-5	353,439	776,174	1,071,610	185,133	32,671	2,419,027
Mr. Robert Marshall, President, Copper River Native Association, Drawer H, Copper Center, Alaska, 99573. Grant No.: 99-9-119-30-6	51,227	47,500	65,580	11,330	1,999	177,636
Mr. Woodrow Morrison, President, Dena AKA Corporation, 200 N. Cushman Street, Suite 5, Fairbanks, Alaska 99701. Grant No.: 99-9-120-30-7	537,218	1,229,952	1,698,111	293,369	51,771	3,810,421
Mr. Charles H. Johnson, Executive Vice President, Kawerak Incorporated, P.O. Box 948, Nome, Alaska 99762. Grant No.: 99-9-123-30-8	386,524	541,705	747,895	129,207	22,801	1,828,132

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management—Continued

[Fiscal Year 1979 Native Americans Allocations]

Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Frank Peterson, Executive Director, Kodiak Area Native Association, P.O. Box 172, Kodiak, Alaska 99615. Grant No.: 99-9-115-30-9	117,968	193,033	266,507	46,042	8,125	631,675
Mr. Dennis Tiepelman, President, Maiuneluk Association, P.O. Box 256, Kotzebue, Alaska 99752. Grant No.: 99-9-124-30-10	239,968	430,029	593,711	102,571	18,101	1,384,380
Mr. Soloman D. Atkinson, Mayor, Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926. Grant No.: 99-9-064-30-11	189,749	166,251	229,531	39,654	6,998	632,183
Mr. Derenty Tabios, Executive Director, North Pacific Rim, 433 W. 9th Aveune, Suite 200, Anchorage, Alaska 99501. Grant No.: 99-9-118-30-12	94,095	102,075	140,928	24,347	4,297	365,742
Mr. Hank Cavalera, Sitka Community Association, 132 Lincoln Street, P.O. Box 4360, Mt. Edgecombe, Alaska 99835, Grant No.: 99-9-1776-30-13	62,027	187,980	259,531	44,837	7,912	562,287
Mr. Raymond Paddock, President, Tlingit and Haida Council, One Sealaska Plaza, Suite 200, Juneau, Alaska 99801. Grant No: 99-9-114-30-14	476,096	1,249,155	1,724,622	297,949	52,579	3,800,401
Mr. Carl Jack, President, Yupiktak Bista, Inc., P.O. Box 848, Bethel, Alaska 99559. Grant No.: 99-9-122-30-15	1,030,371	1,990,966	2,748,791	474,886	83,804	6,328,818
Mr. Arnold Taylor, Chairman, American Indian Association of Tucson, Inc., 375 S. Stone Avenue, Tucson, Ariz. 85701. Grant No.: 99-9-492-30-16	329,542	0	0	0	0	329,542
Mr. Donald Holroyd, Chairman, Affiliation of Arizona Indian Centers, Inc., 2721 N. Central Avenue, Suite 908, Phoenix, Ariz. 85004. Grant No.: 99-9-268-30-17	733,281	0	0	0	0	733,281
Mr. Franklin McCabe, Chairman, Colorado River Indian Tribes, Route 1, Box 23-B, Parker, Ariz. 85344, Grant No.: 99-9-498-30-18	91,410	163,219	225,345	38,931	6,870	525,775
Mr. Alexander Lewis, Governor, Gila River Indian Community, Box 97, Sacaton, Ariz. 85247. Grant No.: 99-9-054-30-19	657,521	410,827	567,200	97,990	17,293	1,750,831
Mr. Abbott Sekaquaptewa, Chairman, Hopi Tribal Council, Box 123, Oraibi, Ariz. 86039. Grant No.: 99-9-057-30-20	438,632	538,673	743,709	128,484	22,674	1,872,172
Mr. Melton Campbell Chairman, Indian Development District of Arizona, Inc.: 1777 W. Camelback Road, Suite A-108, Phoenix, Ariz. 85015. Grant No.: 99-9-053-30-21	180,244	212,740	293,717	50,743	8,955	746,399
Mr. Joe W. Washington, Executive Director, Native, Americans for Community Action, 15 North San Francisco, P.O. Box 572, Flagstaff, Ariz. 86002. Grant No.: 99-9-1777-30-22	62,685	0	0	0	0	62,685
Mr. Peter MacDonald, Chairman, Navajo Nation. Window Rock, Ariz. 865150 Grant No.: 99-9-059-30-23	7,443,359	10,314,620	14,240,693	2,460,246	434,164	34,893,082
Mr. Cecil Williams, Chairman, The Papago Tribe of Arizona, P.O. Box 837, Sells, Ariz. 85634. Grant No.: 99-9-181-30-24	554,765	943,435	1,302,536	225,028	39,711	3,065,475
Mr. Leon Ben, Chairperson, Phoenix Indian Center, Inc., 3302 N 7th Street, Phoenix, Ariz. 85014. Grant No. 99-9-195-30-25	446,662	0	0	0	0	446,662
Mr. Gerald Anton, Chairman, Salt River Pima-Maricopa Indian Community, Route 1, Box 216, Scottsdale, Ariz., 85256. Grant No. 99-9-476-30-26	152,451	83,378	115,114	19,887	3,510	374,340
Mr. Ned Anderson, Chairman, San Carlos Apache Tribe, P.O. Box "0", San Carlos, Ariz., 85550. Grant No. 99-9-173-30-27	423,967	319,868	441,621	76,295	13,464	1,275,215

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management—Continued

[Fiscal Year 1979 Native Americans Allocations]

Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Ronnie Lupe, Chairman, White Mountain Apache Tribe, P.O. Box 700, White River, Ariz., 85941. Grant No. 99-9-174-30-28	553,285	412,342	569,293	98,352	17,356	1,650,628
Mr. Eddie Panell, Chairman, American Indian Center of Arkansas, Inc., 1410 Barber Street, Little Rock, Ark., 72202. Grant No. 99-9-1778-30-29	145,187	0	0	0	0	145,187
Ms. Valacia Thacker, Chairman, Americans for Indians Future and Traditions, Inc., 1430 Seventh Avenue, San Diego, California, 92101. Grant No. 99-9-084-30-30	344,945	0	0	0	0	344,945
Mr. Lawrence Blacktooth, Chairman, California Indian Manpower Consortium, 4441 Auburn Boulevard, Suite J, Sacramento, Calif. 95841. Grant No.: 99-9-055-30-31	1,976,889	635,694	877,660	151,626	26,758	3,668,627
Mr. Robert F. Musgrove, Chairman, Candalaria American Indian Council, 301 N. A Street, Oxnard, Calif. 93030. Grant No.: 99-9-086-30-32	268,912	0	0	0	0	268,912
Ms. Beverly McComb, Chairperson, Fresno American Indian Council, 5150 N. 6th Street Suite 162, Fresno, Calif., 93710. Grant No.: 99-9-079-30-33	332,664	0	0	0	0	332,664
Mr. Peter Masten, Chairman, Hoopa Valley Business Council, P.O. Box 815, Hoopa, Calif., 95546. Grant No.: 99-9-1142-30-34	105,497	123,804	170,927	29,530	5,211	434,969
Mr. Jay Wise, Chairman, Indian Center of San Jose, Inc., 3485 East Hill Drive, San Jose, Calif., 95127. Grant No.: 99-9-499-30-35	289,906	0	0	0	0	289,906
Sam A. Pinto, President, Board of Directors, Orange County Indian Center, Inc., 125 N Brookhurst Street, Suite #1, Garden Grove, Calif., 92640. Grant No.: 99-9-170-30-36	248,985	0	0	0	0	248,985
Mr. David Brown, Acting Chairman, Region IX American Indian Council, 330 Ellis Street, Room 518, San Francisco, Calif., 94102. Grant No. 99-9-081-30-37	845,545	0	0	0	0	845,545
Mr. George Effman, Chairman, Sacramento Indian Center, Inc., 1929 V Street, Sacramento, Calif., 95818. Grant No. 99-9-458-30-38	209,790	0	0	0	0	209,790
Ms. Luwana Quitiquit, Executive Director, San Bernadino Indian Center, 441 W. 8th Street, San Bernardino, Calif., 92401. Grant No. 99-9-1779-3-39	214,148	0	0	0	0	214,148
Mr. Sandy E. Gibbs, President, Tribal American Consulting Corporation, 6155 S. Eastern Avenue, Commerce, Calif., 90040. Grant No. 99-9-1141-30-40	1,712,171	0	0	0	0	1,712,171
Mr. Milton Marks, Chairman, Tri-County Indian Development Council, Inc., 324 7th Street, Eureka, Calif. 95501. Grant No. 99-9-686-30-41	352,261	61,144	84,417	14,584	2,574	514,980
Mr. David Peri, Chairman, Ya-Ka-Ama Indian Education and Development, Inc., 6215 Eastside Road, Healdsburg, Calif., 95448. Grant No. 99-9-082-30-42	179,392	0	0	0	0	179,392

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management—Continued

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. John Kezer, Director, Colorado Div. of Labor and Employment Training Svs., 251 E. 12th Avenue, Denver, Colo., 80203. Grant No. 99-9-060-30-43	53,475	139,974	193,253	33,387	5,892	425,981
Mr. Doug Roubideaux, Chairman, Denver Native American United, 1580 Gaylord Street, Denver, Colo., 80206. Grant No. 99-9-076-30-44	459,543	0	0	0	0	459,543
Mr. Scott Jacket, Chairman, Ute Mountain Indian Tribe, General Delivery, Towaoc, Colo., 81334. Grant No. 99-9-1143-30-450	66,614	135,426	186,974	32,302	5,700	447,016
Mr. Alton Smith, Chairman, American Indians for Development, Inc., 21 Cooke Avenue, P.O. Box 117, Meriden, Conn. 06450. Grant No. 99-9-361-30-46	162,564	0	0	0	0	162,564
Mr. A. N. Kupferman, Chief, Office of Ceta Planning and Administration, Department of Labor, State of Delaware, 701 Shipley Street, Wilmington, Del. 19801, Grant No. 99-9-177-30-47	36,235	0	0	0	0	36,235
Mr. Joe A. Quetone, Executive Director, Florida Government Council on Indian Affairs, 105½ E. College Avenue, Tallahassee, Fla. 32301. Grant No. 99-9-692-30-48	353,442	0	0	0	0	353,442
Mr. Buffalo Tiger, Chairman, Miccosukee Corporation, P.O. Box 440021, Miami, Fla.,33144. Grant No. 99-9-052-30-49	98,152	54,069	74,650	12,897	2,276	242,044
Mr. Howard Tommie, Chairman, Seminole Tribe of Florida, 6073 Sterling Road, Hollywood, Fla. 33024. Grant No.: 99-9-004-30-50	109,857	67,209	92,789	16,030	2,829	288,714
Mr. Bill Hammack, Executive Director, State Commission of Indian Affairs, Suite 626, Fulton Federal Building, 11 Pryor Street SW., Atlanta, Ga. 30303. Grant No.: 99-9-691-30-51	135,128	0	0	0	0	135,128
Mr. Myron Thompson, Chairman, Alu Like, Inc., 2828 Paa Street, Suite 3035, Honolulu, Hawaii 96819. Grant No.: 99-9-1179-30-52	3,185,365	0	0	146,202	25,801	3,357,368
Mary Wika, Exec. Dir., Hawaii Council of American Indian Nations, American Indian Service Center, 677 Ala Moana Boulevard, Suite 718, Honolulu, Hawaii 96817. Grant No. 99-9-640-30-53	57,559	0	0	0	0	57,559
Mr. Lonnie Racehorse, Executive Director, Idaho Inter-Tribal Policy Board, 910 Main Street, Suite 214, Boise, Idaho 83702. Grant No.: 99-9-066-30-54	208,996	79,841	110,231	19,044	3,361	421,473
Mr. Wilfred A. Scott, Chairman, Nez Perce Tribe, P.O. Box 305, Lapwai, Idaho, 83540. Grant No.: 99-9-065-30-55	122,875	107,128	147,905	25,552	4,509	407,969
Mr. Lionel Boyer, Chairman, Shoshone-Bannock Tribes, Fort Hall Indian Reservation, P.O. Box 306, Fort Hall, Idaho 83203. Grant No.: 99-9-1780-30-56	166,977	405,268	559,526	96,665	17,059	1,245,495

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management—Continued

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Edward A. Miller, American Indian Bus Assn Training and Employment Program, 1124 West Granville Street, Chicago, Ill., 60660. Grant No.: 99-9-809-30-57	579,788	0	0	0	0	579,788
Mr. Chief Lone Eagle, Acting President, Indiana Indians Consortium Organizations, Inc., 119 State Street, Hammond, Ind. 46320. Grant No.: 99-9-696-30-58	207,762	0	0	0	0	207,762
Mr. Jay Hunter, Executive Director, Mid America All Indian Center, 650 N. Seneca, Wichita, Kans. 67203. Grant No.: 99-9-168-30-59	214,532	0	0	0	0	214,532
Mr. Howard Simmons, Chairman, United Tribes of Kansas and Southeast Nebraska, P.O. Box 147, Horton, Kans., 66439. Grant No.: 99-9-178-30-60	445,318	95,506	131,859	22,780	4,020	699,483
Mr. Ernest Sickey, Chairman, Inter-Tribal Council of Louisiana, Inc., 263 Riverside Mall, Suite 208, Baton Rouge, La. 70801. Grant No.: 99-9-503-30-61	386,006	17,181	23,721	4,098	723	431,729
Mr. Francis Nicholas, President, Tribal Governors, Inc., 93 Main Street, Orono, Maine, 04473. Grant No.: 99-9-001-30-62	183,642	109,654	151,393	26,155	4,616	475,460
Ms. Marion Pines, Director, Mayors Office of Manpower Resources, City of Baltimore 701 St. Paul Street, Baltimore, Md. 21202. Grant No.: 99-9-796-30-63	271,872	0	0	0	0	271,872
Mr. Cliff Saunders, Executive Director, Boston Indian Council, Inc., 105 S. Huntington Avenue, Jamaica Plains, Mass. 02130. Grant No.: 99-9-494-30-64	305,886	0	0	0	0	305,886
Mr. Russell Peters, Mashpee-Wampahoag, Indian Tribal Council, RFD #2, Mashpee, Mass., 02649. Grant No.: 99-9-408-30-65	53,119	0	0	0	0	53,119
Mr. George Martin, President, Grand Rapids Inter-Tribal Council, 756 Bridge, N.W., Grand Rapids, Mich. 49504. Grant No.: 99-9-694-30-66	133,647	0	0	0	0	133,647
Mr. Fredrick Dakota, Chairman, Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Mich., 49783. Grant No.: 99-9-172-30-67	126,329	220,320	304,180	52,551	9,274	712,654
Mr. Rick Andrews, Chairperson, Michigan Indian Manpower Consortium, 820 W. Saginaw, Lansing, Mich. 48915. Grant No.: 99-9-1144-30-68	608,648	0	0	0	0	608,648
Mr. Vince Adams, Chairman, North American Indian Association of Detroit, 360 John R, Detroit, Mich., 48226. Grant No.: 99-9-695-30-69	391,237	0	0	0	0	391,237
Mr. Joseph K. Lumsden, President, Sault Ste. Marie, Tribe of Chippewa Indians, 206 Greenaugh Street, Sault Ste. Marie Mich., 49783. Grant No.: 99-9-507-30-70	102,510	77,819	107,440	18,562	3,276	309,607

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Michael Lind, Acting Chairman, American Indian Fellowship Assn., 2 E. Second Street, Duluth, Minn., 55802. Grant No.: 99-9-254-30-71	77,157	39,920	55,115	9,522	1,680	183,394
Mr. Gary Donald, Chairman. Bois Forte R. B. C., P.O. Box 698, Nett Lake, Minn., 55772. Grant No.: 99-9-010-30-72	78,712	127,846	176,509	30,494	5,381	418,942
Mr. William J. Houle, Chairman, Fond Du Lac R.B.C., 105 University Road, Cloquet, Minn. 55720. Grant No.: 99-9-009-30-73	108,294	66,702	92,091	15,910	2,808	285,805
Mr. Hartley White, Chairman, Leech Lake R.B.C., Box 308, Cass Lake, Minn., 56633. Grant No.: 99-9-012-30-74	324,936	337,555	466,039	80,514	14,208	1,223,252
Mr. Arthur W. Gahbow, Chairman, Mille Lacs R.B.C. Star Route, Onamia, Minn., 56359. Grant No.: 99-9-008-30-75	62,301	73,777	101,859	17,597	3,105	258,639
Mr. Joseph J. Bedeau, Minneapolis Regional Native American Ctr., 1530 East Franklin Avenue, Minneapolis, Minn., 55404. Grant No.: 99-9-204-30-76	803,748	67,712	93,487	16,151	2,850	983,948
Mr. Rodger A. Jourdain, Chairman, Red Lake Tribal Council, Red Lake, Minn., 56671. Grant No.: 99-9-017-30-77	238,104	401,225	553,944	95,700	16,888	1,305,861
Mr. Darrell Wadena, Chairman, White Earth R.B.C., Box 274, White Earth, Minn., 56591. Grant No.: 99-9-011-30-78	232,677	716,546	989,286	170,911	30,161	2,139,581
Mr. Calvin Isaac, Chairman, Mississippi Band of Choctaw Indians, Route 7, Box 21, Philadelphia, Miss., 39350. Grant No.: 99-9-005-30-79	628,908	216,783	299,297	51,707	9,125	1,205,820
Mr. George Barta, Chairman, Region VII American Indian Council, Inc., 310 Armour Road, Suite 212, Kansas City, Mo., 64116. Grant No.: 99-9-237-30-80	385,128	0	0	0	0	385,128
Mr. Norman Hollow, Chairman, Assiboine & Sioux Tribes, Fort Peck Indian Reservation, P.O. Box 37, Poplar, Mont., 59255. Grant No.: 99-9-033-30-81	401,379	301,172	415,807	71,836	12,677	1,202,871
Mr. Daniel Boggs, Chairman, Blackfeet Tribal Business Council, Blackfeet Indian Reservation, Browning, Mont., 59417. Grant No.: 99-9-006-30-82	609,827	741,612	1,024,169	176,937	31,224	2,583,969
Mr. John Windy Boy, Chairman, Chippewa Cree Tribe, Rocky Boys Reservation, Rocky Boy Route, Box Elder, Mont., 59521. Grant No.: 99-9-035-30-83	159,768	186,464	257,438	44,475	7,849	655,994
Mr. Thomas Swaney, Chairman, Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Mont., 59855. Grant No.: 99-9-031-30-84	314,521	369,390	509,992	88,107	15,548	1,297,558
Mr. Forest Horn, Chairman, Crow Indian Tribe, Crow Tribal Council, P.O. Box 371, Crow Agency, Mont. 59022. Grant No.: 99-9-030-30-85	225,825	558,380	770,917	133,185	23,503	1,711,810

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Charles Jack Plummage, President, Fort Belknap Community Council, Fort Belknap Agency, Harlem, Mont. 59526. Grant No.: 99-9-032-30-86	183,532	225,879	311,855	53,877	9,508	784,651
Mr. George Henkle, Jr., Executive Director, Montana United Indian Association, POB 5988, Helena, Mont. 59601. Grant No.: 99-9-074-30-87	649,319	0	0	0	0	649,319
Mr. Allen Rowland, Chairman, Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, Mont. 59043. Grant No.: 99-9-034-30-88	234,541	239,522	330,692	57,131	10,082	871,968
Mr. Edward Cline, Omaha Tribe of Nebraska, P.O. Box 13, Macy, Nebraska 68760. Grant No.: 99-9-014-30-174	80,556	171,809	237,205	40,980	7,232	537,782
Mr. Art May, Director, Nebraska Indian Inter-Tribal Development Corp., P.O. Box 682, Winnebago, Nebr. 68071. Grant No.: 99-9-087-30-89	146,941	288,538	398,366	68,822	12,145	914,812
Mr. Robert Trudell, Tribal Chairman, Santee Sioux Tribe of Nebraska, Route 2 Santee, Niobrara, Nebr. 68760 Grant No.: 99-9-236-30-90	74,903	56,091	77,441	13,379	2,361	224,175
Ms. Jan Searcey, Executive Director, United Indians of Nebraska, 1270 So. 119th Court, Omaha, Nebr., 68144. Grant No.: 99-9-509-30-91	244,491	0	0	0	0	244,491
Mr. Del Steve, Chairman Inter-Tribal Council of Nevada, 650 South Rock Boulevard, Reno, Nevada, 89502. Grant No.: 99-9-058-30-92	570,550	629,125	868,592	147,046	25,949	2,241,262
Mr. Emmett Knight, Chairman, Las Vegas Indian Center, 215 East Bonanza Road, Las Vegas, Nevada, 89158. Grant No.: 99-9-687-30-93	56,901	0	0	0	0	56,901
Mr. John Horn, Acting Commissioner, New Jersey Department of Labor and Industry, John Fitch Plaza, Trenton, N.J., 98620. Grant No.: 99-9-651-30-94	306,518	0	0	0	0	306,518
Mr. Delfin J. Lovato, Chairman, All Indian Pueblo Council, P.O. Box 6507, 1015 Indian School Road, N.W., Albuquerque, N. Mex. 97107 Grant No.: 99-9-023-30-95	1,220,674	1,692,320	2,336,475	379,547	66,979	5,695,995
Mr. Gerald Wilkinson, Executive Director, National Indian Youth Council, 201 Hermosa, N.E., Albuquerque, N. Mex. 87107	838,940	0	0	0	0	838,940
Floyd R. Correa, Chairman, Pueblo of Laguna, P.O. Box 194, Laguna, N. Mex., 87026. Grant No.: 99-9-1583-30-97	227,032	224,363	309,762	53,515	9,444	824,116
Mr. Edison Laselute, Governor, Pueblo of Zuni, Zuni Tribal Council, P.O. Box 339, Zuni, N. Mex. 87327. Grant No.: 99-9-021-30-98	412,812	542,210	748,592	129,328	22,823	1,855,765
Mr. Norman Ration, Executive Director, Ramah Navajo School Board, Inc., P.O. Box 248, Ramah, N. Mex., 87321. Grant No.: 99-9-146-30-99	110,295	276,411	381,622	65,930	11,635	845,893

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Mr. Valentino Garcia, Governor, Santo Domingo Tribe, Santo Domingo, N. Mex. 87052. Grant No.: 99-9-1781-30-100	162,263	116,729	161,160	27,842	4,913	472,907
Mr. Michael Bush, Executive Director, American Indian Community House, Inc., 10 E. 38th Street, New York City, N.Y., 100160. Grant No.: 99-9-348-30-101	799,117	39,920	55,115	9,522	1,680	905,354
Miss Iza Brant, Chairperson, Native American Manpower, Inc., 250 Summer Street, Buffalo, N.Y., 14222. Grant No.: 99-9-689-30-102	339,134	0	0	0	0	339,134
Mr. Leonard Garrow, Principal Chief, St. Regis Mohawk Tribe, Hogansburg, N.Y., 13655. Grant No.: 99-9-522-30-103	179,558	186,969	258,135	44,596	7,870	677,128
Mr. Calvin Lay, President, Seneca Nation of Indians, Manpower Office, Box #344, Salamanca, N.Y. 14779. Grant No.: 99-9-002-30-104	829,511	678,647	936,962	161,871	28,566	2,635,557
Roy Maynor, Chairman, Cumberland County Association for Indian People, Route 2, Box 2-B, Downing Road, Fayetteville, North Carolina 28301. Grant No.: 99-9-1782-30-105	167,882	0	0	0	0	167,882
Mr. John Crow, Principal Chief, Eastern Band of Cherokee Indians, Cherokee CETA, P.O. Box 481, Cherokee, N.C. 28719 Grant No.: 99-9-003-30-106	487,226	412,848	569,991	98,473	17,378	1,585,916
Mr. Kenneth Maynor, Executive Director, Lumbee Regional Development Association, P.O. Box 68, Pembroke, N.C. 28372 Grant No.: 99-9-067-30-107	2,768,757	0	0	0	0	2,768,757
Mr. A. Bruce Jones, Executive Director, North Carolina Commission of Indian Affairs, P.O. Box 27228, Raleigh, N.C. 27611. Grant No.: 99-9-070-30-108	746,905	0	0	0	0	746,905
Mr. Carl McKay, Chairman, Devils Lake Sioux Tribe, Manpower Programs, Box 276, Fort Totten, N. Dak. 58335. Grant No.: 99-9-037-30-109	234,731	314,310	433,946	74,969	13,230	1,071,186
Mr. Pat McLaughlin, Chairman, Standing Rock Sioux Tribe, Fort Yates, N. Dak. 58563. Grant No.: 99-9-046-30-110	401,133	500,268	690,686	119,324	21,057	1,732,468
Ms. Rose Crow Flies High, Chairperson, Three Affiliated Tribes—Fort Berthold, Manpower Programs, P.O. Box 597. New Town, N. Dak. 58763. Grant No.: 99-9-062-30-111	162,043	251,145	346,738	59,903	10,571	830,400
Mr. Wayne Keplin, Chairman, Turtle Mountain Tribal Council, Turtle Mountain Band of Chippewas Indians, Belcourt, N. Dak. 58335. Grant No.: 99-9-075-30-112	590,942	301,677	416,505	71,956	12,698	1,393,778

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. David Gipp, Executive Director, United Tribes—Educational Technical Center, 3315 S. Airport Road, Bismarck, N. Dak. 58501. Grant No.: 99-9-206-30-113	179,723	0	0	0	0	179,723
Mr. Ned T. Dunn, Administrator, Office of Manpower Development, 30 E. Broad St., 27th Floor, Columbus, Ohio 43215. Grant No.: 99-9-252-30-114	414,099	0	0	0	0	414,099
Mr. Ernest Dry, Jr., Chairman, United Urban Indian Club, Inc., 1212 N. Hudson, Oklahoma City, Okla., 73102. Grant No.: 99-9-036-30-115	729,636	0	0	0	0	729,636
Mr. Doyle R. Edge, Chairman, Caddo Tribe, 115 Northeast First, Anadarko, Okla., 73005. Grant No.: 99-9-1783-30-116	128,138	64,681	89,301	15,428	2,723	300,271
Mr. Lawrence Murray, Chairman, Central Tribes of the Shawnee Area, Inc., P.O. Box 2427, Shawnee, Okla., 74802. Grant No.: 99-9-038-30-117	362,187	496,730	685,803	118,480	20,906	1,684,108
Mr. Ross O. Swimmer, Principal Chief, Cherokee Nation of Oklahoma, P.O. Box 948, Thalequah, Okla., 74464. Grant No.: 99-9-027-30-118	2,507,844	568,992	785,568	135,716	23,950	4,022,070
Mr. Joe Pedro, Chairman, Cheyenne-Arapaho Tribes, P.O. Box 38, Concho, Okla., 73022. Grant No.: 99-9-048-30-119	375,151	1,206,202	1,665,321	287,704	50,772	3,585,150
Mr. Overton James, Governor, Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma, 74820. Grant No.: 99-9-042-30-120	594,151	252,661	348,831	60,265	10,635	1,266,543
Mr. Hollis Roberts, Principal Chief, Choctaw Nation of Oklahoma, Drawer 1201, Durant, Okla., 74701. Grant No.: 99-9-041-30-121	1,012,364	448,220	618,827	106,910	18,867	2,205,188
Mr. James Cox, Tribal Chairman Comanche Tribe of Oklahoma, Comanche Tribal Office Fort Sill Indian School Building, Room 382, Lawton, Okla. 73502. Grant No.: 99-9-182-30-122	352,893	215,772	297,902	51,466	9,082	927,115
Mr. Claude Cox, Principal Chief, Creek Nation of Oklahoma, P.O. Box 1114, Okmulgee, Okla. 74447. Grant No.: 99-9-025-30-123	1,165,089	999,020	1,379,279	238,287	42,051	3,823,726
Mr. Lee Cusher, Executive Director, Inter-Tribal Council of Northeast Oklahoma P.O. Box 1308, Miamia, Okla. 74354. Grant No.: 99-9-1135-30-124	185,798	33,352	46,045	7,955	1,404	274,554
Mr. Sylvester J. Tinker, Principal Chief, Osage Tribal Council, P.O. Box 178, Pawhuska, Okla. 74056 Grant No.: 99-9-022-30-126	229,552	476,518	657,896	113,650	20,058	1,497,683
Mr. Victor E. Childers, Chairman, Oklahoma Tribal Assistance Program, Inc., P.O. Box 2841, Tulsa, Okla. 74101. Grant No.: 99-9-072-30-127	647,380	0	0	0	0	647,380
Mr. Dwayne Pratt, Director, Pawnee Indian Tribal Business Community, Pawnee Tribal Business Building, Pawnee, Okla. 74058. Grant No.: 99-9-1785-30-128	25,655	102,075	140,928	24,347	4,297	297,302

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Leonard Biggoose, Chairman, Ponca Tribe of Indians, P.O. Box 11, White Eagle, Ponca City, Okla. 74601. Grant No.: 99-9-029-30-129	272,915	391,624	540,689	93,410	16,484	1,315,122
Mr. Richard Tiger, Principal Chief, Seminole Nation of Oklahoma, P.O. Box 745, Wewoka, Okla. 74884. Grant No.: 99-9-051-30-130	257,264	155,134	214,182	37,003	6,530	670,113
Mr. Henry L. Allen, President, Tonkawa Tribe of Oklahoma, P.O. Box 86, Tonkawa, Okla. 76453. Grant No.: 99-9-1136-30-131	30,452	60,632	83,719	14,464	2,552	191,826
Mr. Ken Smith, General Manager, Confederated Tribes of Warm Springs, Warm Springs, Oreg., 97761. Grant No.: 99-9-256-30-132	682,626	206,170	284,647	49,176	8,678	1,231,297
Mr. Bennie Moore, Chief Council Person, Organization of Forgotten Americans, 3949 So. 6th Street, P.O. Box 1257, Klamath Falls, Oreg. 97601. Grant No.: 99-9-088-30-133	145,844	0	0	0	0	145,844
Ms. Ruth Lyon, Chairman, Urban Indian Council, 2326 N.W. Westover Road, Portland, Oreg., 97210. Grant No.: 99-9-164-30-134	386,194	0	0	0	0	386,194
Mr. Edward Hale, Chairman, Council of Three Rivers, 200 Charles Street, Dorseyville, Pa., 15238. Grant No.: 99-9-642-30-135	206,447	0	0	0	0	206,447
Mr. Linquest Clark, President, United American Indians of the Delaware Valley, 225 Chestnut Street, Philadelphia, Pa., 19106. Grant No.: 99-9-477-30-136	189,233	0	0	0	0	189,233
Mr. William Wilcox, Executive Director, Rhode Island Indian Council, 56 Washington Street, Room 300, Providence, R.I. 02903. Grant No.: 99-9-510-30-137	128,303	0	0	0	0	128,303
Mr. James B. Edwards, Office of the Governor, Manpower Division, 1800 St. Julian Place, Columbia, S.C. 29204. Grant No.: 99-9-403-30-138	173,912	0	0	0	0	173,912
Mr. Melvin Garreaux, Chairman, Cheyenne River Sioux Tribe, P.O. Box 100, Eagle Butte, S. Dak. 57625. Grant No.: 99-9-039-30-139	379,508	493,699	681,617	117,757	20,781	1,693,362
Mr. Robert Fillbrick, Chairman, Crow Creek Sioux Tribe, P.O. Box 658, Fort Thompson, S. Dak. 57339. Grant No.: 99-9-040-30-140	141,788	211,224	291,623	50,381	8,891	703,907
Mr. Richard P. Thompson, Chairman, Lower Brule Sioux Tribe, Lower Brule, S. Dak. 57548. Grant No.: 99-9-073-30-141	58,902	52,048	71,859	12,415	2,191	197,415
Mr. Elijah Whirwind Horse, President, Oglala Sioux Tribe, P.O. Box G, Pine Ridge, S. Dak. 57770. Grant No.: 99-9-043-30-142	885,949	788,301	1,088,354	188,026	33,181	2,983,811
Mr. Ed Drivinghawk, Chairman, Rosebud Sioux Tribe, Box 38, Rosebud, S. Dak. 57570. Grant No.: 99-9-044-30-143	670,621	1,467,959	2,026,710	350,138	61,789	4,577,217
Mr. Gerald Flute, Chairman, Sisseton-Wahpeton Sioux Tribe, RR2 Box 144, Sisseton, S. Dak., 57262 Grant No.: 99-9-045-30-144	206,857	193,033	266,507	46,042	8,125	720,564

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Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Mr. Mike Wells, Executive Director, United Sioux Tribes of South Dakota Development Corporation, P.O. Box 1193, Pierre, S. Dak. 57501. Grant No.: 99-9-165-30-145	632,413	0	0	0	0	632,413
Mr. Larry Cournoyer, Chairman, Yankton Sioux Tribe, Route 3, Wagner, S. Dak. 57380. Grant No.: 99-9073-30-146	120,874	413,858	571,386	98,714	17,420	1,222,252
Mr. Brooks Parker, Commissioner, State of Tennessee, Department of Employment Security, 528 Cordell Hull Building, Nashville, Tenn. 37219. Grant No.: 99-9-300-30-147	109,034	0	0	0	0	109,034
Mr. Rex J. Evans, Executive Director, Uset Incorporated, 1101 Kermit Drive, Suite 800, Nashville, Tenn. 37217. Grant No.: 99-9-360-30-148	179,229	0	0	0	0	179,229
Mr. Fulton Battise, Principal Chief, Alabama-Coushatta Indian Reservation, Route 3, Box 640, Livingston, Tex., 77351. Grant No.: 99-9-1784-30-173	156,562	16,676	23,023	3,977	702	200,940
Mr. Ray Johnson, Board Chairman, Dallas Inter-Tribal Center, Carter Plaza, 334 Centre Street, Dallas, Tex. 75201. Grant No.: 99-9-078-30-149	510,087	0	0	0	0	510,087
Mr. Jose G. Sierra, President, Indian Employment and Training Service, 505 N. Belt, Suite 430, Houston, Tex. 77060. Grant No.: 99-9-693-30-150	567,017	32,341	44,650	7,714	1,361	653,083
Mrs. Ruby Black, Chairperson, Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026. Grant No.: 99-9-049-30-151	149,955	194,549	268,600	46,404	8,189	667,697
Ms. Thelma Pinnecoose, Chairperson, Utah Native American Consortium, Inc., 120 W. 1300 South, Salt Lake City, Utah, 84115. Grant No.: 99-9-163-30-152	291,662	2,021	2,791	482	85	297,041
Mr. Maurice B. Rowe, Chairman, Governor of Virginia, Manpower Services Council, POB 1314, Richmond, Va. 23210. Grant No.: 99-9-745-30-153	292,567	27,287	37,674	6,509	1,149	365,186
Ms. Jeannette Whitford, President, American Indian Community Center, 1007 N. Columbus Street, Spokane, Wash. 99202. Grant No.: 99-9-1138-30-154	151,984	0	0	0	0	151,984
Mr. Joseph Dela Cruz, Tribal Chairman, CHE-110-QUI-SHO, P.O. Box 1228, Taholah, Wash., 98587. Grant No.: 99-9-068-30-155	150,038	236,491	326,506	56,408	9,954	779,397
Mr. Al Aubertin, Chairman, Colville Confederated Tribes, P.O. Box 150, Nespelem, Wash., 99155. Grant No.: 99-9-1726-30-156	278,038	870,669	1,202,073	207,672	36,648	2,595,100
Mr. Cliff Sijohn, Executive Director, Eastern Washington Indian Consortium, P.O. Box 223, Wellpinit, Wash. 99040. Grant No.: 99-9-184-30-157	945,203	1,215,803	1,678,577	289,994	51,176	4,180,753
Ms. Linda Day, Executive Director, Northwest Inter-Tribal Council, 1618 Pacific, Everett, Wash., 98201. Grant No.: 99-9-069-30-158	196,962	543,726	750,685	129,690	22,887	1,643,950
Ms. Bertha Turnipseed, Tribal Chairwoman, Puyallup Tribe, 2215 East 32nd, Tacoma, Wash., 98404. Grant No.: 99-9-1137-30-159	186,930	443,167	611,850	105,704	18,654	1,366,305

U.S. Department of Labor—Employment and Training Administration, Office of Administration and Management—Continued

[Fiscal Year 1979 Native Americans Allocations]

Prime Sponsor	Title III	Title II	Title VI	YETP	YCCIP	Total
Cyrus J. Fletcher, Executive Director, Seattle Indian Center, 121 2nd and Stewart Streets, Seattle, Wash., 98101. Grant No.: 99-9-511-30-160	573,672	0	0	0	0	573,672
Mr. Gray Johnson, Director, Western Washington Indian Employment and Training Program, 11006 Pacific Avenue, Suite 1 & 2, Keller Professional Building, Tacoma, Wash. 98444. Grant No.: 99-9-071-30-101	811,723	601,332	830,219	143,430	25,311	2,412,015
Mr. Kenneth Andrews, Executive Director, Great Lakes Inter-Tribal Council, Inc. Manpower Consortium, Box 636, Ashland, Wis., 54806. Grant No.: 99-9-016-30-162	162,536	226,384	312,554	53,997	9,529	765,000
Mr. Rick St. Germaine, Chariman, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Route 2, Hayward, Wis., 54843. Grant No.: 99-9-018-30-163	135,539	210,719	290,925	50,261	8,870	696,314
Mr. William Wildcat, St., Tribal Chairman, Lac Du Flambeau Consortium, P.O. Box 24, Lac Du Flambeau, Wis., 54538. Grant No.: 99-9-1139-30-164	113,009	94,495	130,463	34,592	6,104	378,663
Ms. Shirley Daily, Chairperson, Menominee Restoration Committee, P.O. Box 397, Keshena, Wis., 54135. Grant No.: 99-9-013-30-165	220,017	192,022	265,112	45,801	8,083	731,035
Ms. Josephine Bigler, Chairperson, Miiwaukee Area American Indian Manpower Council, 3701 Lisbon Avenue, Milwaukee, Wis. 53208. Grant No.: 99-9-227-30-166	296,677	0	0	0	0	296,677
Mr. Purcell Powless, Chairman, Oneida Tribe of Indians of Wisconsin, Inc., Route 4, Depere, Wis., 54115. Grant No.: 99-9-015-30-167	338,476	118,245	163,253	28,204	4,977	653,155
Mr. E. W. Taylor, Chairman, St. Croix Tribal Council, Star Route Webster, Wis., 54893. Grant No.: 99-9-497-30-168	59,758	200,107	2,767,274	47,730	8,423	592,292
Mr. Robert E. Miller, Tribal Chairman, Stockbridge-Munsee Community, Route 1, Bowler, Wis., 54416. Grant No.: 99-9-500-30-169	74,334	69,229	95,580	16,513	2,914	258,570
Mr. Bruce Lego, Superior Indian Organization, 1004 N. 6th Street, Superior, Wis., 54880. Grant No.: 99-9-1140-30-170	52,845	0	0	0	0	52,845
Mr. Calvin Whiteeagle, Chairman, Wisconsin Winnebago Business Committee, Rt. 1 Creamery Rd. Nekoosa, Wis., 54457. Grant No.: 99-9-019-30-171	148,037	264,283	364,878	63,037	11,124	851,359
Mr. Jesse Miller, Arapahoe Chairman, Mr. Robert Harris Shoshone Chairman, Shoshone and Arapahoe Joint Business Council, P.O. Box 217, Fort Washakie, Wyo., 82514 Grant No.: 99-9-050-30-172	475,219	276,411	381,622	65,930	11,635	1,210,817
National Total	73,214,325	50,338,600	69,499,080	12,137,920	2,142,000	207,331,925

[FR Doc. 79-10702 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, Ellsworth Division, Box 143, Eighty-Four, Pa. 15330, has filed a petition to modify the application of 30 CFR 75.1700 (gas and oil wells) to its Somerset Mine No. 60 in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns an abandoned gas well (designated as No. BP-48) which traverses a coal seam within the petitioner's mine.

2. Instead of leaving a barrier of coal around the well's borehole to prevent the leakage of gas, the petitioner proposes to plug the well and mine through it.

3. The petitioner proposes to use plugging methods developed through a cooperative effort by the U.S. Bureau of Mines, the Energy Research and Development Administration, the Mine Safety and Health Administration, and the coal industry.

4. The petition details these methods which involve the use of a mechanical bridge plug, cement, and sulfur hexaflouride (a tracer to be used in the detection of gas leakage from the plugged well).

5. The petitioner states that this alternative method will at all times guarantee no less than the same measure of protection afforded its miners by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 2, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-42-C]

[FR Doc. 79-11085 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-43-M

Bishop Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bishop Coal Company, Horsepen, Va. 24619, has filed a petition to modify the application of 30 CFR 75.1101 (fire protection) to its Dry Fork Mine in McDowell County, Va. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petitioner proposes to use a single branch of nozzles as part of its deluge-type water spray system at the main and secondary belt drives in its mine, rather than the two or more branch lines required by the standard.

2. The single branch line will have a minimum inside diameter of two inches.

be installed at or above the plane of the belt, and be offset to one side of the belt.

3. Nozzles will be installed at intervals of not more than eight feet apart and be positioned to insure that water is directed toward the top and bottom surfaces of the top belt and the top surface of the bottom belt.

4. The petitioner states that this alternate method will at all time guarantee no less than the same measure of protection afforded its miners by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: April 2, 1979.

Robert B. Lagather,
Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-43-C]
[FR Doc. 79-11086 Filed 4-9-79; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Proposed Exemption for Certain Transactions Involving the Carpenters Pension Trust Fund for Northern California, Extension of Time for Comments

In FR Doc. 79-6091, appearing at page 11860 in the Federal Register of Friday, March 2, 1979, the Department of Labor (the Department) published a Notice of Pendency of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The Notice of Pendency concerned an application filed by the trustees of the Carpenters Pension Trust Fund for Northern California (the Plan).

In paragraph headed "Notice to Interested Persons" which apears in the Notice at 44 FR 11861, it was specified that the Notice of the proposed exemption would be made available to persons who might be affected if the proposed exemption were to be granted. The Notice was to be disseminated by mailing copies of such Notice to all participants and beneficiaries of the Plan, all associations which represent employees of covered employers, and all current parties to the collective bargaining agreement creating the Plan.

The applicant has requested an extension of the time period specified in the notice for receipt by the Department of comments with respect to the proposed exemption. Such an extension would allow the applicant effect dissemination of copies of the Notice to the persons specified in "Notice to Interested Persons."

According to the applicant, such dissemination was not accomplished as originally intended because of difficulties attendant to bulk mailing, and because of other unforseen circumstances.

Therefore, the time period for receipt of comments on the proposed exemption hereby is extended. Accordingly, within ten days of publication in the Federal Register of this extension of time for receipt of comments, the proposed exemption as it appears at 44 FR 11860 will be mailed to those parties specified in "Notice to Interested Persons." Such mailing to each person will include a cover letter, explaining clearly that the time period for receipt of comments by the Department is extended to May 11, 1979. Such comments should be addressed to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-694.

For further information contact Stephen Elkins of the Department at (202) 523-8196. (This is not a toll-free number.)

Signed at Washington, D.C. this 6th of April, 1979.

Ian D. Lanoff,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[Exemption Application No. D-694]
[FR Doc. 79-11199 Filed 4-9-79; 8:45 am]
BILLING CODE 4510-29-M

Proposed Exemption for a Transaction Involving International Cellulose, Inc. Employees Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale on July 31, 1975, of a 2.643 acre parcel of real property in Atlanta, Georgia by International Cellulose, Inc. Employees Profit Sharing Plan (the Plan) to International Cellulose, Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, the persons who were Plan trustees at the time of the sale and the current Plan trustees.

DATES: Written comments and requests for a public hearing must be received by the Department on or before May 10, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-244.

FOR FURTHER INFORMATION CONTACT: Robert N. Sandler, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act, and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency of the exemption is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file

with the Department for the complete representations of the applicants.

1. In August of 1968, the Plan purchased from an independent party 2.643 acres of land in Atlanta, Georgia located at 1240 Stewart Avenue, S.W., for $40,000. The land was unimproved at the time of the sale except for a warehouse. Subsequently, the Plan leased the property to the Employer for the term of August 2, 1968 to January 31, 1973 at a rental of $1,500 per month. Pursuant to the terms of the lease, the Employer erected a second warehouse on the property at its own expense, which was deemed the property of the Plan.

2. On the expiration date of the initial term of the lease, the lease was renewed for a term beginning February 1, 1973 and ending January 31, 1979 at a rental rate of $1,650 per month. However, on December 20, 1974, the warehouse constructed by the Employer was extensively damaged by fire, rendering the property untenantable. As a result, pursuant to the terms of the lease, the lease terminated. The Plan received insurance payments of one-half the rental rate from December 20, 1974 to July 31, 1975, pursuant to its business interruption insurance policy. The Plan also received the full value of the building in cash in accordance with the terms of its fire insurance policies.

3. After the fire, the Plan's negotiations with the Employer to enter into a new arrangement, in which the lease with the Employer would be renewed and the Employer would build the improvements as needed, were unsuccessful because the Employer, due to an improved cash position, was unwilling to enter into another lease arrangement. The Employer did, however, offer to purchase the property.

4. Subsequent to the fire and resultant termination of the lease, the applicants stress that the property was producing no income other than the six months of business interruption insurance payments, and if the Plan had not accepted the Employer's offer, the Plan would have had to pay the demolition and clearance costs to put the land in a tenantable and/or marketable condition. Moreover, Robert Allen, an independent realtor, stated in a letter to the employer that it was his opinion that he would be unable to find a purchaser or exchange candidate for the property. In addition, the Plan would have had to continue to pay the general real estate taxes until the property was sold, which would have been in the indeterminable future. Therefore, the sale to the Employer was entered into to avoid a substantial and continuing financial drain on the Plan.

5. Appraisals of the property were made by Richard Laurence & Associates and Pritchett, Stripling & Bray, Inc., both of Atlanta, Georgia, both of whom were independent of any party to the sale. The former appraised the value of the property at $115,000 and the latter at $132,500. The purchase prices of $123,750 was arrived at by taking the mean of the two appraisal figures. The Plan sold the property to the Employer on July 31, 1975, for an aggregate cash consideraton of $123,750. Both appraisers state in their appraisals that the commercial real estate market and the economy in the area were both depressed.

6. In summary, the applicants represent that the proposed exemption satisfies the statutory criteria of Act section 408(a) because the sale was administratively feasible since it was a one-time occurrence, and it was in the interests of and protective of the Plan and its particpants and beneficiaries because two independent appraisals were obtained, because the Employer paid the Plan the mean of the two appraisals in cash and because the property was virtually unmarketable and untenantable without a substantial cash outlay and was therefore non-income producing.

Notification of Interested Persons

Notice of the pending exemption will be given to the current trustees of the Plan, the trustees of the Plan at the time the property was sold and to all active and retired participants and beneficiaries under the Plan, within ten days of the publication of this notice in the **Federal Register,** by distribution of copies of the notice published in the **Federal Register** personally to all active participants and Plan trustees, and by first class mail to all other participants and beneficiaries.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan participants and beneficiaries and in prudent fashion in accordance with section 404(a)(1)(B) of the Act, nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) and (F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are also invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available with the application for exemption at the address set forth above.

Proposed Exemption

Based on the representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale on July 31, 1975 of the real property commonly known as 1240 Stewart Avenue, S.W., Atlanta, Georgia, comprising 2.643 acres, by the Plan to the Employer for an aggregate cash consideration of

$123,750, provided that this amount was not less than the fair market value of the property at the time of the sale.

The pending exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C. this 5th day of April, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[Exemption Application No. D-244]

[FR Doc. 79-11200 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-29-M

Proposed Exemption for a Certain Transaction Involving Drug City, Inc. Profit Sharing Plan and Drug City, Inc. Pension Plan

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a one-third interest in a 40 acre parcel of unimproved real property by the Drug City, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Drug City, Inc. Pension Plan (the Pension Plan) (collectively, the Plans), to Martin Feldman, a trustee of both Plans and sole shareholder of Drug City, Inc. (the Employer), the sponsoring employer of the Plans. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans, Martin Feldman, the trustees of the Plans and N. Z. Feldman, wife of Martin Feldman.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before May 10, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1259. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Robert N. Sandler of the Department of Labor, (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer pursuant to section 408(a) of the Act, and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency of the exemption is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. On March 14, 1974, 40 acres of unimproved land in Collier County, Florida, was purchased for $4,300 per acre by the following parties in the following fractional interests: one-third interest to Martin Feldman, a trustee of both Plans and sole shareholder of the Employer, one-third interest to N. Z. Feldman, a trustee of the Plans and wife of Martin Feldman, and one-third interest to the Plans. The Pension Plan purchased 57 percent of the Plans' one-third interest and the Profit Sharing purchased 43 percent of the one-third interest. These percentages reflect the current holdings of the Plans.

2. The legal description of the property is the West one-half of the East one-half of the Southwest quarter of Section 13, Township 49 South, Range 25 East, Collier County, Florida.

3. The land was purchased with the hope of rapid appreciation, which has not occurred. No use has been made of the property since its purchase in 1974 and no income has been earned on the property. Furthermore, there is no prospect for income being earned on the property in the near future. At the time the application was filed, the one-third interest in the land constituted 35 percent of the assets of the Pension Plan and 82 percent of the assets of the Profit Sharing Plan. Additionally, the lack of an active market for the land has created a liquidity problem for the Plans which will become more serious with the passage of time.

4. Two appraisals of the 40 acres of land have been secured from independent appraisers. Richard P. Webster & Assoc., Inc. stated that the market value of the property was $130,000, or $3,250 per acre, as of October 2, 1978. John J. Conroy, Jr. concluded that the market value of the property was $176,000 or $4,400 per acre, as of November 4, 1978. Martin Feldman has offered to purchase the Plans' one-third interest in the property at the higher appraised value, for an aggregate cash consideration of $58,667.

5. No commission will be paid in connection with the proposed sale. If the property were sold to a third party, a commission of 10 percent of the purchase price would have to be paid and the Plans would thereby suffer a loss based on their original investments.

6. In summary, the applicant represents that the proposed sale of property meets the statutory criteria for an exemption under section 408(a) of the Act, because the sale would be a one-time occurrence for cash, the property has been and continues to be non-income producing and has appreciated very little since its purchase in 1974 and the value of the property is being determined by independent appraisals.

Notice to Interested Parties

Notice of the proposed exemption will be given to all interested parties, including all participants and beneficiaries of the Plans, within seven days of the publication of this Notice of Pendency in the **Federal Register**, by mailing copies of the Notice of pendency and securing signed receipts of such notification from each participant and beneficiary. Such notification will also inform interested persons of their right to comment and request a hearing with respect to the pending exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available with the application for exemption at the address set forth above.

Proposed Exemption

Based on the representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a one-third interest in a 40 acre parcel of real property legally described as the West one-half of the East one-half of the Southwest quarter of Section 13, Township 49 South, Range 25 East, Collier County, Florida, by the Plans to Martin Feldman, for an aggregate cash consideration of $58,667, each Plan receiving a portion of the consideration proportional to its fractional holding of the one-third interest, provided that the aggregate amount is not less than the fair market value of the one-third interest in the property. The pending exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 6th day of April, 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[Application No. D–1259]

[FR Doc. 79–11201 Filed 4–9–79; 8:45 am]

BILLING CODE 4510–29–M

Proposed Exemption for Certain Transactions Involving Motor Machine and Supply Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain transactions by which the Motor Machine and Supply Profit Sharing Plan (the Plan) leases real property for a limited period of time to the Parts House, a California corporation, doing business as Motor Machine and Supply (the Employer) and sells the same property to the Employer or to the principal shareholder of the Employer. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and would affect the Employer, and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before May 26, 1979.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–191. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Department of Labor, (202) 523–8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a)(1)(B) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

The Plan was established on December 15, 1957, and had 58 participants as of March 22, 1979. On July 10, 1974, the San Diego Trust and Savings Bank (the Trustee), as trustee for the Plan, entered into a lease with the Employer for the rental by the Employer of land purchased by the Trustee. The land, located at 517 Nineth Street, San Diego, California, was purchased from a third party by the Trustee for $22,500 cash, while the building thereon was purchased at the same time by the Employer from the same party for $32,500 by paying $3,655.70 cash and assuming an existing mortgage on the balance. The building, which is a two-story structure, is being used as a maintenance garage by the Employer and is readily adaptable to many uses including storage, warehouse facility, or garage.

The lease, for use of the land only, has a 10 year term with rent payable at the rate of $2,700 per year, with a right of renewal in the Employer and a cost of living rental adjustment. Under these terms, the Plan has been receiving at least a 12 percent rate of return on the initial investment of $22,500 in the land. The terms of the lease give the Trustee the option to require the Employer, under certain circumstances, to purchase the subject property at the current market value of the property. The current market value is to be determined by agreement of the parties, or if the parties cannot agree, by arbitration as set forth in Article XX of the lease. The obligation of the Employer to purchase the land is personally guaranteed by Nolan T. Wright, the single largest shareholder of the Employer. Article XV of the lease provides that upon the expiration of the lease, the ownership of the building will merge with that of the land so that the Plan will own both the building and the land thereunder.

The employer, aware that the transitional relief provided for leases between plans and parties in interest under section 414(c)(2) of the Act is not available for leases made binding after June 30, 1974, has requested a limited exemption from the prohibited transaction restrictions of the Act to continue the lease agreement until 120 days after the grant of the requested exemption is effectuated. This will enable the Plan to terminate the lease and to sell the land in an orderly manner.

The Employer also requests an exemption for the sale of the land to the Employer or to Nolan J. Wright. The land was appraised at a fair market value of $22,500 as of June 10, 1977, by an independent, qualified professional appraiser. The land will be sold, on or before expiration of the exemption for continuation of the lease, for cash in an amount not less than the current fair market value plus the present value of the right of the Plan to receive the building at the expiration of the lease.

Notice to Interested Persons

Upon publication in the **Federal Register** by the Department of the proposal for the exemption sought herein, the notice will be hand delivered to all other interested parties. Such notice will include a copy of the notice of the pendency of the exemption as published in the **Federal Register** and will be delivered no later than 15 days following publication in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a)(1)(B) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease by the Plan of land, located at 517 Ninth Street, San Diego, California, to the Employer from January 1, 1975, until 120 days after the grant of this exemption provided the lease remains at least as favorable to the Plan as an arm's length transaction with an unrelated party, and to the sale by the Plan of the said land to the Employer or to its principal shareholder, Nolan J. Wright, for cash in an amount that is not less than the sum of (A) the current fair market value of the property at the time of the sale and (B) the present value of the right to receive the building on the expiration of the lease, pursuant to the terms, conditions and representations as set forth in the application. The proposed exemption, if granted, will be subject to the express conditions that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 6th day of April 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[Application No. D-191]

[FR Doc. 79-11202 Filed 4-9-79; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting

The *Ad Hoc* Informal Advisory Subcommittee on Geodynamics and Geology of the NAC–STAAC will meet April 26 and 27, 1979 at NASA Headquarters, Room 226A, Federal Office Building 10B, 600 Independence Avenue, S.W., Washington, D.C. 20546. The meeting is open to the public. Members of the public will be admitted to the meeting at 8:30 am on both days on a first-come, first-served basis and will be required to sign a visitors' register. The seating capacity of the meeting room is for 35 persons.

This Subcommittee, chaired by Dr. Michael A. Chinnery, is comprised of nine members of the NAC–STAAC and will review and discuss the Research Program for FY 1980 and 1981, special areas of interest, the Five Year Plan for Non-Renewable Resources, and strengths and weaknesses in the foregoing.

The approved agenda for the meeting is as follows:

April 26, 1979

Time and topic

8:30 a.m.: Chairperson's Remarks.
9:00 a.m.: Summary of Resource Observation. Plans.
9:30 a.m.: NASA Response to Subcommittee's Concerns and Recommendations.
10:30 a.m.: FY 1981 Program Strategy Recommendations.
11:30 a.m.: Specific Issues and Problems in the Geodynamics Program.
1:30 p.m.: Status on Mobile Laser Systems (MOBLAS).
2:00 p.m.: Report by NRC/NAS Panel on Crustal Movements.
3:00 p.m.: Strengths, Weaknesses and Recommendations on NASA's Geodynamics Program.
3:30 p.m.: Data Analysis & Distribution.
4:30 p.m.: Report by GEOSAT on Management of Satellite Data.
5:00 p.m.: Adjourn.

April 27, 1979

8:30 a.m.: NASA Five Year Plan for Non-Renewable Resources Program—Strategy and Issues.
10:30 a.m.: Fiscal 1980 Future Research Strategy in Non-Renewable Resources Program.
11:30 a.m.: Fiscal 1980 Budget and Budget Projections for Non-Renewable Resources Program.
1:00 p.m.: Strengths and Weaknesses.
2:00 p.m.: Findings and Recommendations.
3:00 p.m.: Tenure of Subcommittee Chairman and Members.
4:00 p.m.: Adjourn.

For further information regarding the meeting, please contact Louis B.C. Fong, Executive Secretary of the Subcommittee, Washington, D.C. at (202)755–7450.

March 4, 1979.

Arnold W. Frutkin,

Associate Administrator for External Relations.

[Notice (79-38)]

[FR Doc. 79-10970 Filed 4-9-79; 8:45 am]

BILLING CODE 7510-01-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 26, 1979—7:00 p.m.–10:00 p.m.; April 27, 1979—9:00 a.m.–5:00 p.m.
PLACE: Conference Room 321, National Science Foundation, Washington, D.C. Telephone 202/632–4318.
TYPE OF MEETING: April 26, 1979—Closed. April 27, 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 26, 1979—Closed Session (7:00 p.m.–10:00 p.m.)— Discussion of projects under consideration for funding.

April 27, 1979—Closed Session (9:00 a.m.–5:00 p.m.)—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 Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. Rebecca Winkler,

Committee Management Coordinator.

April 5, 1979.

[FR Doc. 79-1181 Filed 4-9-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Arkansas Power and Light Co., Arkansas Nuicear One, Unit 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 10 to Facility Operating License No. NPF–6 issued to Arkansas Power and Light Company for Operation of Arkansas Nuclear One, Unit 2 (the facility) located at the licensee's site in Pope County, Arkansas. The amended license is effective as of its date of issuance.

The amendment temporarily suspends Technical Specification 3.6.1.6 which requires that the purge supply and exhaust system isolation valves shall be closed during Operating Modes 1, 2, 3 and 4. The temporary suspension is granted for one thirty-hour period to allow two eight-hour purging operations in facility Operating Mode 4 (Hot Shutdown) and Mode 3 (hot Standby) only.

This temporary suspension allows the licensee to purge a smoke filled containment atmosphere which is inhibiting personnel operations within containment. During a 53 day reactor shutdown, the licensee conducted inspections and repairs on reactor coolant pumps and residual oil left on

the reactor coolant pump casings from these repairs has been smoking as the facility approaches startup temperature and pressure prior to reactor criticality at Mode 2 operations.

The Commission has determined that during the time of the temporarily allowed puring operations that the worst case postulated loss-of-coolant accident which could occur after a 53-day reactor shutdown and prior to reactor criticality would result in doeses less than 0.0001 rem which are substantially less than the 10 CFR Part 100 guidelines at the exclusion boundary.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. We have concluded, that because the amendment does not involve a significant increase in the probability or consequences of accidents previously considered and does not involve a significant decrease in a safety margin, the amendment does not involve a significant hazards consideration. The application for the amendment complies with the standards and requirements of the Act and the Commission's regulations.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 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 a copy of (1) the application for amendment dated March 26, 1979, (2) Amendment No. 10 to lincese NPF–6 and (3) the Commission's related Safety Evaluation Report supporting Amendment No. 10 to License NPF–6.

These items are available for public inspection at the Commission's Public document Room at 1717 H Street, NW., Washington, D.C. 20555 and at the Arkansas Polytechnic College, Russellville, Arkansas 72801. 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 Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 30th day of March 1979.

John F. Stolz,

Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[Docket No. 50-368]

[FR Doc. 79-11013 Filed 4-9-79; 8:45 am]

BILLING CODE 7590-01-M

Indiana and Michigan Electric Co. and Indiana and Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 27 and 9 to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana and Michigan Electric Company and Indiana and Michigan Power Company (the licensees), which revised the licenses for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, (the facility), located in Berrien County, Michigan. The amendments became effective on February 23, 1979.

The amendments add license conditions to include the Commission-approved physical security plan as part of the licenses.

The licensees' filings 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 amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any signficant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensees' filings dated June 28, 1978, as supplemented January 31, 1979, February 2, 1979 and February 8, 1979, and the Commission's Security Plan Evaluation Report-are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 27 and 9 to License Nos. DPR–58 and DPR–74, and (2) the Commission's related letter to the licensee dated April 3, 1979. 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 Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (1) and (2) 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 3rd day of April, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket Nos. 50-315 and 50-316]

[FR Doc. 79-11014 Filed 4-9-79; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co. et al; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, (the licensees), which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2 (the facility) located in the Town of Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment modifies the existing Technical Specifications by incorporating low temperature overpressure protection system requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d) (4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 8, 1977, and supplemental information dated December 3, 1976, March 8 and 22 and June 9, 1977, (2) Amendment No. 50 to License No. DPR–65, 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 Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut. 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 23rd day of March 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[Docket No. 50–336]

[FR Doc. 79–11015 Filed 4–9–79; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

New England Power Co., et al.; Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

New England Power Company, Bangor Hydro-Electric Company, Canal Electric Company, Fitchburg Gas & Electric Light Company, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, Narragansett Electric Company, Taunton Municipal Lighting Plant, and Vermont Electric Cooperative, Inc. (applicants), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on January 15, 1979, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns two additional ownership participants, Maine Public Service Company and Massachusetts Municipal Wholesale Electric Company of the New England Power Project, Units 1 and 2 to be located in Washington County in Charlestown, Rhode Island.

The information was filed in connection with the application for construction permits filed by the New England Power Company.

Notice of Receipt of the Antitrust Application was published in the **Federal Register** under Docket No. P–533–A on July 7, 1975 (40 FR 28510).

A copy of the letter, dated January 15, 1979, filed by the New England Power Company is available for public inspection and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and in the local public document rooms located at the Cross Mill Public Library, Old Post Road, Charlestown, Rhode Island 02813 and the University of Rhode Island, University Library, Government Publications Office, Kingston, Rhode Island 02881.

Any person who wishes to have his views on the antitrust matters with respect to the Massachusetts Municipal Wholesale Electric Company and Maine Public Service Company presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before May 21, 1979.

Dated at Bethesda, Maryland, this 12th day of March 1979.

For the Nuclear Regulatory Commission

Olan D. Parr,

Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[Docket Nos. STN 50–568–A and STN 50–569–A]

[FR Doc. 79–8175 Filed 3–26–79; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Allowances and Differentials; Cost of Living Allowance (COLA-Nonforeign Areas-Requirements of Section 205(b)(2) of E.O. 10000.); Conclusions After Considering Comments

AGENCY: Office of Personnel Management.

PURPOSE: Notification of the conclusions reached and actions taken by the Office of Personnel Management, successor to the pertinent functions of the United States Civil Service Commission, concerning interpretation of the provisions of section 205(b)(2) of E.O. 10000.

BACKGROUND: The Commission, by direction of the U.S. District Court for Alaska in *Curlott* v. *Hampton,* 438 F. Supp. 505 (D. Alaska 1977), solicited comments from interested parties on the interpretation it had given to the requirements of section 205(b)(2) of E.O. 10000. This request for comments appeared at 43 FR 20524 May 12, 1978), and in CSC Bulletin 591–23.

Section 205(b)(2) states that the Commission shall "in fixing the Territorial cost-of-living allowance . . . make appropriate deductions when quarters or subsistence, commissary or other purchasing privileges *are furnished* at a cost substantially lower than the prevailing local cost." (emphasis added)

The Commission's view was that the "are furnished" language of section 205(b)(2) requires that the deductions be made applicable to all employees receiving these privileges or benefits from the Federal government regardless of whether the basis for receiving them is Federal employment itself or other reasons such as military retirement or marriage to an active duty member of the military. Accordingly, the Commission reduced cost of living allowance rates for employees receiving section 205(b)(2) special purchasing privileges in Guam and the Virgin Islands in 1974 and in Alaska, Hawaii and Puerto Rico in 1976. This action led to the *Curlott* litigation against the Commission by employees in Alaska affected by the implementation of section 205(b)(2). As a result of this litigation the Commission was required to solicit comments on its interpretation of section 205(b)(2).

SUMMARY: The Commission received approximately 3,500 letters in response to the request for comments. Four hundred of these comments were from Alaska, 20 from Guam, 2740 from Hawii, 300 from Puerto Rico and 40 from other areas. The comments were mainly from individuals directly affected by section 205(b)(2). About 50 of the comments supported the Commission's interpretation of section 205(b)(2). The other comments fell into two major categories: those which indicated that access to commissary and exchange facilities or receipt of government housing benefits should be considered only where they are received as a condition of civilian employment; and those which indicated that these benefits shold not be considered at all in setting allowance rates.

No comment addressed the issue of why E.O. 10000 states "are furnished" instead of "are furnished as a condition of employment." No comment suggested how the Commission could legally ignore the provisions of section 205(b)(2) when adequate data and methods of measuring the savings resulting from the benefits in question are available. Rather, the comments simply stated the opinions of the individual respondents

as to how the language of this section should be interpreted, without providing any substantial evidence of intent on the part of the framers of the order.

The provisions of section 205(b)(2) of E.O. 10000 have been part of the Commission's regulations pertaining to the cost of living allowance since the program was enacted in 1948. They are now contained in 5 CFR Part 591, Subpart B, § 591.208. Though these regulations have been ineffect over the entire period of the program, no reductions in allowance payments were made until 1974 in Guam and the Virgin Islands, and 1976 in other allowance areas.

Agencies and employees in Alska, Hawaii and Puerto Rico were given advance notice that the Commission intended to implement the provisions of section 205(b)(2) and what effect the implementation was likely to have on allowance rates in FPM Letter 591–12, dated August 29, 1974, FPM Letter 591–13, dated May 14, 1975, FPM Letter 591–15, dated December 31, 1975 and CSC Bulletin 591–18, dated December 31, 1975. FPM Letters 591–12 and 591–13 indicate that employees in the Virgin Islands and Guam renting government housing or having access to military commissary and post exchange facilities would not receive the cose of living allowance. FPM Letter 591–15 and CSC Bullentin 591–18 gave employees notice that the provisions of section 205(b)(2) were to be implemented in all allowance areas. Paragraph 1 on page 2 of Bulletin 591–18 clearly states that the reason for access to section 205(b)(2) benefits was not be a pertinent factor in determining living cost differences. The Commission received no comments from employees or agencies regarding these issuances prior to the December 1976 COLA reductions.

Even though the implementation of section 205(b)(2)'s requirements in Alaska caused controversy, the Commission believed there was no legal basis to interpret section 205(b)(2) other than as it had. Because of the strength of the opposition to the implementation of the provisions of section 205(b)(2) the Commission brought the matter to the attention of the President. On June 30, 1978, the President issued E.O. 12070 and a Memorandum for the Chairman of the Civil Service Commission. In addition to requiring a study of the cost of living allowance program and problems associated with it, E.O. 12070 authorizes the temporary restoration of allowance payments to most employees affected by section 205(b)(2). Executive Order 12070 does not provide for retroactive allowance payments for those employees. In addition, the President states in the memorandum that ". . . the recent implementation of section 205(b)(2) of Executive Order 10000, as amended, has been consistent with its intent . . .".

CONCLUSION: Despite the nature of most of the responses received pursuant to 43 FR 20524, the Commission continues to view section 205(b)(2) as requiring cost of living allowance reductions because of section 205(b)(2) type benefits regardless of the basis for access to them. Therefore, the Commission concludes that its 1974 and 1976 allowance reductions, as implemented under section 205(b)(2), were required by the Order and that an amendment to the Order was necessary before different treatment was permissible.

Office of Personnel Management.

Alan K. Campbell,

Director.

[FR Doc. 79–10784 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Number and Classification of Executive Level Positions in Existence in the Executive Branch as of October 13, 1978

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Civil Service Reform Act of 1978 requires the Director of the Office of Personnel Management to publish the following notice.

The Office has determined that the following executive level positions existed on October 13, 1978, in accordance with the requirements of 5 U.S.C. 5311(b):

Executive Level I	13 positions
Executive Level II	49 positions
Executive Level III	85 positions
Executive Level IV	305 positions
Executive Level V	87 positions
Total	539 positions

In addition, 47 positions classified at Executive Level IV and 127 positions classified at Executive Level V on October 13, 1978 will move into the Senior Executive Service.

Not included in these figures are those executive level positions that agencies no longer claim because they have become obsolete through reorganizations, though not revoked by law.

Since passage of the Civil Service Reform Act, Congress has established 57 additional executive level positions

FOR FURTHER INFORMATION CONTRACT: Anne Andrews, Executive Personnel and Management Development, 202–632–6820.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10972 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Department of the Army; Title Change in Noncareer Executive Assignment

By Notice of February 14, 1975, F.R. Doc. 75–4221, the Civil Service Commission authorized the Department of the Army to make a change in title for the position of Principal Deputy Assistant Secretary of the Army (Financial Management), Office, Assistant Secretary of the Army (FM), Office, Secretary of the Army, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Principal Deputy Assistant Secretary of the Army (IL&FM), Office, Assistant Secretary of Army (IL&FM), Office, Secretary of the Army.

Office of Personnel Management.

Beverly M. Jones,

Issuance Systems Manager.

[FR Doc. 79–10738 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

Department of Health, Education, and Welfare; Title Change in Noncareer Executive Assignment

By notice of March 27, 1975, FR Doc. 75–7959, the Civil Service Commission authorized the Department of Health, Education, and Welfare to make a change in title for the position of Director, Editorial Operations Division, Editorial Operations Division, Office of the Assistant Secretary for Public Affairs, Office of the Secretary, authorized to be filled by noncareer executive assignement. This is notice that the title of this position is now being changed to Director, Editorial and Publication Management Division, Office of the Asistant Secretary for Public Affairs, Office of the Secretary.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10737 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

Department of Housing and Urban Development; Title Change in Noncareer Executive Assignment

By notice of May 17, 1977, FR Doc. 77–13868, the Civil Service Commission authorized the Department of Housing and Urban Development to make a change in title for the position of Executive Assistant to the Secretary (Policy Development), Immediate Office, Office of the Secretary, authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Executive Assistant to the Secretary (Special Projects), Immediate Office of the Secretary/Under Secretary.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79–10739 Filed 4–9–79; 8:45 am]

BILLING CODE 6325–01–M

PANAMA CANAL COMPANY

Change to Accounting Policy

Notice is hereby given that on March 22, 1979, pursuant to 2 C.Z.C. §§ 62, 65, 76A Stat. 8, 11, the Board of Directors of the Panama Canal Company further amended the statement of accounting policy published on page 32293 of the **Federal Register** of November 23, 1973, and amended in 39 FR 27943, August 2, 1974, and 41 FR 8840, March 1, 1976.

The amendment consists of two changes which will become effective October 1, 1979. Both changes relate to the valuation of inventories. The first change amends the basis for valuation of operating materials and supplies from "last receipt cost" to "average cost". The second change deletes the policy relating to valuation of merchandise held for sale, and renumbers the remaining paragraphs:

Paragraph 4: In the first sentence, the words, "restated annually at last receipt cost", are deleted and in their place are substituted the words, "valued at average cost".

Paragraph 5: Paragraph 5 is deleted and subsequent paragraphs renumbered.

The change in the basis for valuation of inventories of operating materials and supplies was deemed necessary to more realistically reflect the value of inventories. Under the annual last receipt cost concept, operating materials and supplies were generally valued at the receipt cost on record three months prior to the start of the fiscal year. The effects of chronic inflation resulted in unrealistic valuation of inventory during the fiscal year; significant year-end adjustments were required to reflect more accurately the Company's financial condition. The change to average cost valuation will make current reporting more reflective of the Company's financial condition.

The deletion of the policy on merchandise held for sale reflects the requirement under the Panama Canal Treaty of 1977 for the suspension of retail activities by the Canal enterprise.

Although the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable to this amendment of a general statement of policy, in accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments to the Secretary, Panama Canal Company, Room 312, Pennsylvania Building, 425—13th Street, NW., Washington, D.C. 20004, on or before May 10, 1979. Material thus submitted will be evaluated and acted upon in the same manner as if this amendment were a proposal.

Dated: March 30, 1979.

Thomas M. Constant,

Secretary.

[FR Doc. 79–10950 Filed 4–9–79; 8:45 am]

BILLING CODE 3640–01–M

PRESIDENTIAL COMMISSION ON WORLD HUNGER

Hearing

The Presidential Commission on World Hunger has scheduled a hearing for April 25, 1979 in Chicago, Illinois. The hearing will be held in the U.S. District Court Ceremonial Court Room (Room 2525) located in the Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois. The hearing will begin at 9:30 a.m. and conclude at approximately 4:00 p.m.

The hearing will be open to observers on a space available basis. Oral presentations by interested parties have been scheduled. Persons wishing to submit written statements should mail such statements to the Presidential Commission on World Hunger, 734 Jackson Place, N.W. Washington, D.C. 20006.

Donald B. Harper,

Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79–11031 Filed 4–9–79; 8:45 am]

BILLING CODE 6820–97–M

INTERSTATE COMMERCE COMMISSION

Assignment of Hearings

April 5, 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–C 10300, Fogarty Van Lines, Inc., Investigation and Revocation of Certificates, now assigned for hearing on April 26, 1979, at Tampa, Florida and will be held in the New Conference Room, 700 Twiggs Street.

MC 114569 (Sub No. 236F), Shaffer Trucking, Inc., now assigned for hearing on April 24, 1979, at Tampa, Florida and will be held in the New Conference Room, 700 Twiggs Street.

FD 28838F, State of California, Department of Transportation V. The Atchison, Topeka and Santa Fe Railway Company, now assigned for hearing on April 16, 1979, at San Francisco, California and will be held in Room 510, 211 Main Street.

MC 136602 (Sub No. 7F), Arizona Western Transport, Inc., now assigned for hearing on April 26, 1979, at Phoenix, Arizona and will be held in Maricopa County Superior Court Building 201 West Jefferson.

MC 107064 (Sub No. 129F), Steere Tank Lines, Inc., now assigned for hearing on April 24, 1979, at Phoenix, Arizona and will be held in Maricopa County Superior Court Building.

MC 111401 (Sub No. 528F), Groendyke Transport, Inc., now assigned for hearing on April 24, 1979, at Phoenix, Arizona and will be held in Maricopa County Superior Court Building.

MC–C–10143, O.N.C. Freight Systems, Inc., –V– Herbert D. Needel, DBA Tucson Package Delivery, now assigned for hearing on April 3, 1979, at Tucson, Arizona is postponed to April 25, 1979, (1 day), in Room 4T, U.S. Federal Building, 301 West Congress, Tucson, Arizona.

MC 143762 (Sub No. 2F), Steve T. Allen DBA Riggs, & Allen Transportation, now assigned for hearing on May 16, 1979, (3 days), at Phoenix, AZ., in a hearing room to be latter designated.

MC 2253 (Sub No. 88F), Carolina Freight Carrier Corporation, now assigned June 14, 1979, at Allentown, Pennsylvania is canceled transfered to Modified Procedure.

MC 52214 (Sub No. 1F), Reliable Transport (U.S.) Limited, now assigned June 11, 1979, at

Buffalo, New York is canceled transfered to Modified Procedure.

MC 82492 (Sub No. 145), Michigan & Nebraska Transit Co., Inc., now assigned April 11, 1979, at Washington, D.C. is canceled transfered to Modified Procedure.

MC 117815 (Sub No. 301F), Pulley Freight Lines, Inc., now assigned for prehearing conference on May 21, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 123407 (Sub No. 494F), Sawyer Transport, Inc., now assigned for prehearing conference on June 19, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114632 (Sub No. 169F), Apple Lines, Inc., now assigned for hearing on April 25, 1979, at New York, New York and will be held in Room No. E-2222, Federal Building, 26 Federal Plaza.

MC 117940 (Sub No. 284F), Nationwide Carriers, Inc., now assigned for hearing on April 25, 1979, at New York, New York, and will be held in Room No. E-2222, Federal Building, 26 Federal Plaza.

MC 144622 (Sub No. 2F), Glenn Bros. Meat Co. Inc., now assigned for hearing on April 25, 1979, at New York, New York and will be held in Room No. E-2222, Federal Building, 26 Federal Plaza.

MC 144122 (Sub No. 25F), Caretra Trucking, Inc., now assigned for hearing on April 23, 1979, at New York, New York and will be held in Room E-2222, Federal Building, 26 Federal Plaza.

MC 144401F, General Oilfield Trucking, Inc., now assigned for continued hearing on May 18, 1979, (1 day), at Baton Rouge, LA., in a hearing room to be later designated.

MC 119988 (Sub No. 153F), Great Western Trucking Co., Inc., application dismissed.

H. G. Homme, Jr.,
Secretary.

[Notice 64]
[FR Doc. 79-11104 Filed 4-9-79; 8:45 am]
BILLING CODE 7035-01-M

Missouri-Kansas-Texas Railroad Co. Abandonment at Labette in Labette and Cherokee Counties, Kans.

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, the present and future public convenience and necessity permits abandonment of a portion of MKT's Joplin Subdivision and operations thereover from railroad milepost S-394.4 at Labette, KS, to milepost S-419.1 at but not including Columbus, KS, a distance of 24.7 miles in Labette and Cherokee Counties, KS, 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), this authority shall not be exercised until applicant has received approval from this Commission to operate, via trackage rights, over the line of the St. Louis-San Francisco Railway Company between Columbus and Oswego, KS, and has commenced operations over that line. A certificate of public convenience and necessity permitting abandonment was issued to the Missouri-Kansas-Texas Railroad Company. Since no investigation was instituted, the requirement of Section 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 (Section 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 25, 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 on May 25, 1979.

H. G. Homme, Jr.,
Secretary.

[Docket No. AB-102 (Sub-No. 9F)]
[FR Doc. 79-11103 Filed 4-9-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 70
Tuesday, April 10, 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

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Friday, April 6, 1979 at 12:45 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be open to the public.

Due to extraordinary circumstances, the Commission will hold a special open meeting for the purpose of discussing testimony to be given before the House Administration Committee, U.S. House of Representatives on April 10, 1979.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.
[S-698-79 Filed 4-6-79; 12:33 pm]
BILLING CODE 6715-01-M

2

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m. Friday, April 13, 1979.

PLACE: 20th Street and Constitiution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (Appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: April 9, 1979.
Griffith L. Garwood,
Deputy Secretary of the Board.
[S-692-79 Filed 4-6-79; 9:13 am]
BILLING CODE 6210-01-M

3

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 9 a.m., April 30, 1979.

PLACE: On board MV *Mississippi* at foot of Eighth Street, Cairo, Ill.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-636-1311, extension 5766.
[S-693-79 Filed 4-6-79; 9:13 am]
BILLING CODE 3710-GX-M

4

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 9 a.m., May 1, 1979

PLACE: On board MV *Mississippi* at City Front, vicinity of Beale Street, Memphis, Tenn.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-636-1311, extension 5766.
[S-694-79 Filed 4-6-79; 9:13 am]
BILLING CODE 3710-GX-M

5

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 3:30 p.m., May 2, 1979.

PLACE: On board MV *Mississippi* at City Front, foot of Crawford Street, Vicksburg, Miss.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-636-1311, extension 5766.
[S-695-79 Filed 4-6-79; 9:13 am]
BILLING CODE 3710-GX-M

6

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 9 a.m., May 4, 1979.

PLACE: On board MV *Mississippi* at foot of Prytania Street, New Orleans, La.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-636-1311, extension 5766.
(S-696-79 Filed 4-6-79; 9:13 am)
BILLING CODE 3710-GX-M

7

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 NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at beginning of the meeting.

CHANGES IN THE MEETING: On April 5, 1979, the Commission determined that the date and time for the above meeting be changed to Wednesday, April 25, 1979, at 9:30 a.m.; and that the above change be announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson, Analyst (202) 724–3094.

[S–697–79; Filed 4–6–79 11:59 am]

BILLING CODE 4410–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: April 3, 1979.

CHANGES IN MEETING: Additional item.

The following additional item was considered at a closed meeting held on Wednesday, April 4, 1979, at 5 p.m.: Litigation matter.

Chairman Williams and Commissioners Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

April 6, 1979.

[S–699–79 Filed 4–6–79; 3:28 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
April 10, 1979

Part II

Department of Housing and Urban Development

Office of Interstate Land Sales Registration

Land Registration, Advertising, Sales Practices and Posting of Notices of Suspension

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

24 CFR Parts 1710, 1715

Land Registration, Advertising, Sales Practices, and Posting of Notices of Suspension

AGENCY: Office of Interstate Land Sales Registration.

ACTION: Final rule.

SUMMARY: These Regulations are intended to: (1) Create additional exemptions for those subdivisions for which registration is not necessary in the public interest; (2) produce a more readable and meaningful Property Report when registration is necessary; (3) clarify and simplify both the registration and exemption procedures; (4) correlate the language and provisions in §§ 1715.5, 1715.10, 1715.15 and 1715.25 with the revisions to Part 1710; (5) add new paragraphs in connection with advertising disclaimers and the use of investment potential as a sales inducement; and (6) reflect modifications to the Interstate Land Sales Full Disclosure Act signed into law on October 31, 1978.

The purpose is to provide more assistance to developers in making their submissions and to produce a property report which is more beneficial to prospective purchasers.

DATES: Effective date: May 10, 1079, unless otherwise extended at the request of Congress.

ADDRESSES: Send Comments to: Office of Interstate Land Sales Registration Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410

HUD plans to conduct workshop sessions in several areas of the country to familiarize developers with these revised regulations and to assist and advise them regarding the registration process. These workshops are scheduled as follows:

1. Washington, D.C.—May 8, 9, 10, and 11, 1979, GSA Auditorium. 7th and D Streets SW.

2. Kansas City, Mo.—May 14 and 15, 1979, Holiday Inn Sports Complex, 4011 Blue Ridge Cutoff at I–70.

3. Phoenix, Arizona—May 17 and 18, 1979, Civic Plaza, 225 E. Adams.

4. Orlando, Florida—May 21 and 22, 1979, Officers Club, Naval Training Center.

5. Dallas, Texas—May 24 and 25, 1979, The Hilton Hotel, 914 Commerce Street.

FOR FURTHER INFORMATION CONTACT:

Registration: John F. Weaver, Director, Examination Division, (202) 755–5358, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Exemption: Roger G. Henderson, Director, Policy Development and Control Division, (202) 755–6847, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Advertising and sales practices: Thomas D. Barnett, Office of Interstate Land Sales Registration, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–7812.

SUPPLEMENTARY INFORMATION: These regulations represent a conscientious effort to reduce costs for the industry. They are nearly a total reprint of existing regulations, for simplicity's sake, and more instructions are provided so that developers and others following them will have less trouble understanding what is required, expediting the registration and exemption process. Paperwork and duplication have been reduced substantially for developers and their attorneys; documentation requirements have been reduced by one-third, and paperwork for statutory annual exemption reporting requirements has been reduced by 95.9%. Because of the elimination of paperwork and duplication and the addition of complete, clarifying instructions, compliance costs for developers can be reduced. Financial statement requirements have been made more lenient where appropriate.

The disclosure document for land purchasers, the Property Report, has been simplified. It will be composed in a more easily understood narrative fashion, and, within a generally standard format, information will be omitted if it is extraneous or inapplicable to a particular subdivision. It will be a less imposing document, no longer the size of a legal document and no longer including property restrictions and financial statements which seldom are understood by purchasers and tend to discourage them from reading the Property Report. Yet the rules require that these documents be made available to purchasers if they request them. A cost sheet will be included so that a purchaser can read on one page all the costs being incurred.

On August 4, 1976, the Assistant Secretary for Consumer Affairs and Regulatory Functions published advance notice of proposed rulemaking and on January 31, 1977 published the proposed revision of exemption and disclosure regulations. The objective was to simplify and clarify registration for developers and to provide purchasers a more readable and meaningful Property Report. An additional objective was to revise the exemption provisions so that subdivisions could qualify under more meaningful exemption criteria when registration is not necessary in the public interest or for the protection of purchasers.

In response to a number of substantive comments received from the public, the proposed exemptions and the disclosure requirements were revised and clarified and additional exemption provisions were proposed. Therefore, Part 1710 was again revised and published in its entirety for further comment, on June 1, 1978. In addition, public hearings were held in Washington, D.C., Dallas, Texas, and Denver, Colorado during the latter part of July, 1978. Written comments on the June 1 proposals and oral comments received and recorded at the public hearings have all been considered and the results are reflected in these final regulations.

The Office of Interstate Land Sales Registration will offer exemption guidelines to further clarify HUD policies, positions and procedural requirements pertinent to certain provisions for statutory and regulatory exemption from the requirements of the Interstate Land Sales Full Disclosure Act. In addition, an annotated Property Report will be prepared and made available to assist developers in meeting the revised filing requirements. As unanticipated subjects arise and are resolved by policy decisions, Staff Directives will be issued. An index of these Staff Directives will be published semi-annually in the **Federal Register.**

General Changes

In the registration procedures, the developer will no longer submit a Statement of Record and then repeat elements of that information in a separate Property Report. Neither will a separate section for exhibits continue to be necessary. Instead, information contained in the Property Report will not be repeated elsewhere. Any additional information and exhibits necessary to support representations in the Property Report will immediately follow the Property Report.

Based upon extensive comment, the requirement that a copy of restrictive covenants and a copy of the developer's financial statements be attached to the Property Report has been eliminated. Instead, it will be required that a supply of these documents be maintained at whatever places are necessary so that immediate delivery can be made to a prospective purchaser who requests them.

Part 1710 has been revised to reflect the correct headings and new numbers.

Other changes in the disclosure and exemption requirements are discussed paragraph by paragraph.

Definitions and Exemptions

Section 1710.1 has been amended to add new definitions for "Agent", "Available for Use", "Owner", "Parent Corporation", "Principal", "Site" and "Start of Construction." This section is printed in alphabetical order.

There were numerous comments objecting to the Department's proposed change in the definition of "sale". Based upon these comments the Department has decided to retain the former definition of "sale" without modification. In drafting the proposed definition of "sale", one of the primary concerns was that developers operating under the exemption found in § 1710.11 could sell land free and clear of liens, encumbrances and adverse claims at the time the sales contract was entered into, but encumber the Property during the period a purchaser was making payments under an installment contract. However, this possibility has been addressed by a modification to § 1710.11 (b) (3) which now specifically states that the land must remain free and clear until a deed is furnished to the purchaser.

Contrary to criticisms contained in comments received, the Department did not intend to change the Statute of Limitations under the Act by way of the proposed definition of "sale". Any such modification must be left to the Congress. However, while retaining the current definition of "sale", the Department wishes to make it clear that it is HUD's opinion that purchaser rights may not be extinguished even after a three year period in certain cases where a continuing fraud is present (see *Happy Investment Group* vs *Lakeworld Properties, Inc.*, 396 F. Supp. 175, 188. (N. D. Cal. 1975)).

Sections 1710.02 and 1710.05 have not been changed. The statement of exemption inapplicability previously found in § 1710.12 has been redesignated § 1710.08. A new § 1710.09 has been added to provide a category index for all statutory and regulatory exemptions.

Section 1710.10 has been amended to reflect revisions to the Act which were contained in the Housing and Community Development Amendments of 1978. Consequently, § 1710.10(c) now includes the term "condominium" after the term "commercial". This will clarify that the sale or lease of improved land on which there is a condominium building or the sale or lease under a contract obligating the seller to erect a condominium within two years is exempt. In addition, § 1710.10(j) has been amended to reflect that industrial parks that otherwise meet the statutory criteria may now be exempt even though located in a jurisdiction having no zoning ordinance, provided that the real estate is restricted to industrial or commercial use by a declaration of covenants, conditions and restrictions which has been recorded.

Section 1710.11 has been amended to include the amended formats previously set forth in §§ 1710.101, 1710.102 and 1710.103. This makes the requirements for filing easier to understand and precludes the necessity to searchout requirements located in two or more parts of the Regulations. Section 1710.11 has also been amended to reflect a statutory revision by the Housing and Community Development Amendments of 1978. Under the new provision, United States land patents, or Federal grants and reservations similar to United States land patents, are now acceptable liens, encumbrances or adverse claims. Therefore, real estate that previously could not qualify for the exemption due to the existence of such a patent, may now be eligible for the exemption.

Furthermore, based upon a significant number of comments received concerning elimination of the 120-day provision for delivery of a deed when there exists a blanket encumbrance, HUD has chosen to retain a 120-day provision as previously contained in the exemption provision. Many comments indicated that removal of the 120-day provision would effectively eliminate the exemption since the accepted business practice is to mortgage the real estate (and assure appropriate release provisions) in order to have funds available to complete development plans. Since the present definition of sale was retained, § 1710.11(b)(3) has been amended to make it clear that, to qualify for the exemption (for example when installment contracts are used), the lot must be free and clear until a deed is delivered. HUD has also eliminated the need for a developer to refile when previously sold lots are taken back into the inventory. The new regulation permits a developer to sell reacquired lots which were sold pursuant to this exemption and which continue to meet the exemption eligibility requirements, without obtaining a new HUD approval. This change will save substantial paperwork and cost for both qualified developers and HUD. In addition, the time between reacquisition and resale of qualified lots will no longer be affected by the necessity to obtain a HUD approval.

Section 1710.11(e) has been further amended to eliminate the requirement of having the developer file each acknowledged statement and developer's affirmation within 31 days after the expiration of the calendar year in which the sale or lease was made. Comments received indicated that developers found that the proposed amendment would simplify the reporting requirement. Section 1710.11(e) now requires that the developer file a single copy of the approved Statement of Reservations, Restrictions, Taxes and Assessments along with an affirmation that the Statement is a true representation of the Statement provided to each purchaser. This procedure will eliminate the need for the developer to file copies of each statement. Paragraph (e)(1)(ii) will permit the developer to file only a copy of the purchaser's receipt acknowledging that the Statement was provided. Paragraph (e)(1)(iii) specifying the requirement for submission of the salesperson's affirmation was changed to indicate that in addition to making an on-the-lot inspection, the purchaser received a Statement of Reservations, Restrictions, Taxes and Assessments prior to entering into a sales contract or lease. Paragraph (e)(1)(iv) requires that the developer submit only a single copy of the contract used along with an affirmation that the contract submitted is a true representation of the contract used for each sale. Paragraph (e)(2) is added to avoid confusion with respect to whether the developer complied with the reporting requirements. These changes reduce paperwork and eliminate related cost factors but do not affect consumer rights since HUD retains the capability to verify any transaction. For example, based upon a selected sampling of reports submitted for calendar year 1977: the average number of pages for Statement of Reservations, Restrictions, Taxes and Assessments submitted was 116.8—under the revised requirement, the average number of pages will total 4.2 for a reduction of 96.4%; and the average number of pages for contracts submitted was 86.9—under the revised requirement the average number of pages will total

4.1 for a reduction of 95.3%. Therefore, the estimated total number of pages for these two report items will be reduced from 175,996 to 7,170 annually based upon current filings. However, future savings of the same, or greater, magnitude will be realized as more applicants qualify for the exemption as expanded by the Housing and Community Development Amendments of 1978.

The WARNING at the end of the Statement of Reservations, Restrictions, Taxes and Assessments is amended to advise purchasers that they are purchasing a lot(s) in an offering that has qualified for exemption. Therefore, the purchasers do not have the benefit of any remedies under the Interstate Land Sales Full Disclosure Act. In response to substantial comment from the industry concerning printing costs, this WARNING as well as those contained in the Property Report are no longer required to be printed in red but only need to be enclosed in a heavy-lined box.

Section 1710.12 reflects the new statutory exemption contained in the Housing and Community Development Amendments of 1978. Generally, under this exemption the sale or lease of lots are exempt from the registration provisions of the Act (15 U.S.C. 1704 through 1707) if the lots meet the specific eligibility criteria (listed under § 1710.12) and the lots are located in a municipality or country where a local unit of government specifies minimum standards for the development of subdivision lots taking place within its boundaries. The legislative history of this amendment is unmistakably clear in stating that the exemption is available for improved single-family homesite subdivisions *only* in those jurisdictions that specify minimum standards for the development of subdivision lots.

Section 1710.13 (a) and (b) are redesignated §§ 1710.13(b)(1) and 1710.13(b)(2).

The previous § 1710.13(c) exempted the sale or lease of lots in a subdivision provided their number was less than 50 lots and not more than five percent of the developer's total lots in the subdivision platted of record and provided that the other lots in the subdivision were exempt pursuant to § 1710.10(c) or § 1710.10(i). Based upon comments received from the building industry, HUD has revised § 1710.13(c) to increase the five percent limitation to twenty-five percent of the lots platted of record. In addition, the exemption has been redesignated § 1710.13(b)(3). This revision will permit home builder-developers to sell more lots without the necessity of filing a Statement of Record and Property Report or seeking a HUD approved exemption.

Several comments were received that favored the new § 1710.13(b)(4) exemption which provides an exemption for a lot or lots sold by the developer to a person engaged in the land sales business. To qualify for this exemption that sale must be to a person who is going to resell the lot(s) in the normal course of business. The term "business" is viewed as an activity of some continuity, regularity and permanency or means of livelihood. It is felt that the protections afforded purchasers in non-exempt transactions need not be extended to a person engaged in the land sales business. Section 1710.13(b)(4), however, does not permit an exemption when the sale is made to an individual purchaser who is merely buying the lot for investment purposes to be resold sometime in the future. Such an individual would not be considered to be engaged in the land sales business.

A new § 1710.13(b)(5) exempts the sale of a lot to the owner of any property which adjoins that lot, provided that a residential, commercial or industrial building is located on the lot already owned. This exemption will allow the sale of lots to purchasers who simply wish to increase the size of their property by buying the adjoining lot. It is believed that the protection afforded purchasers in non-exempt transactions need not be extended to purchasers under these circumstances. In addition, HUD has, in the past, issued affirmative No Action Letters in these circumstances. By creating a self-determined exemption, the developer need not submit a No Action Letter request thus eliminating paperwork and the related time-delay before being able to complete the sale.

A new exemption, designated § 1710.13(b)(6), is available for the sale or lease of lots in a subdivision where the developer, during the previous five calendar years, has not and will not in the future make more than 12 sales or leases during any calendar year. In addition, each purchaser must make an on-the-lot inspection of the real estate which is being purchased or leased. It is HUD's opinion that the registration requirements of the Act with respect to such a subdivision are not necessary in the public interest and for the protection of purchasers by reason of the small amount involved and the limited character of the public offering. This exemption also relieves the small-volume developer of the necessity to file a Statement of Record and Property Report or exemption request with OILSR.

Section 1710.13(b)(7) is a new provision which will allow an exemption for lot sales in scattered sites. One of the most troublesome areas in administering the land sales program is the common promotional plan concept. The problems that have arisen in connection with the common promotional plan often stem from the sale of lots on a scattered-site basis. Normally this situation entails a developer who is offering 50 or more lots in different locations, even though the number of lots in any location total fewer than 50. In most cases, the offering would be subject to the jurisdiction of the statute because the lots are commonly promoted through common ownership and the same sales force. The scattered sites would thus comprise a subdivision as defined by the statute.

Under the new exemption, the sale or lease of lots in a site would be exempt if the site contained less than 50 lots. A site is defined as a group of contiguous lots or lots designated or known by the same or similar name, whether such lots are divided or merely proposed to be divided. For the purpose of defining site, lots will be considered contiguous even though contiguity is interrupted by a road, a park, a small body of water, recreational facility or in a similar manner.

This exemption would also apply to real estate brokers as well. (An exemption for real estate brokers selling lots in scattered locations, each of which comprises less than 50 lots, had been requested in some of the comments.) Thus, a broker who had an ownership interest in more than 50 lots in a number of locations could claim exemption for any location where less than 50 lots were offered.

Section 1710.13(b)(8) has been established to exempt the sale or lease of real estate to a government or a government agency. This is similar to the statutory exemption which exempts the sale or lease of real estate by a government or government agency. It is felt that the purchasing government or government agency would assure itself of any and all protections in such a transaction and would not need the protections provided by the Act.

Section 1710.13(b)(9) is a new exemption which pertains to the sale of a lot or lots which the purchaser has leased for at least one year and on which the purchaser has maintained his or her primary residence for that same period. This exemption was established primarily at the urging of the mobile

home sector of the housing industry. HUD feels that a purchaser would have ample opportunity to be aware of the benefits or pitfalls involved in such a transaction if a primary residence has been maintained on the lot or lots leased for at least one year prior to the purchase and, consequently, would not need the additional protection or benefits from full disclosure contained in a Property Report.

One comment was received which suggested a new exemption for the sale of a mobile home and land package when they are purchased from a mobile home dealer and a land developer in separate but related transactions. Under the suggestion, the sale would be exempt if: (1) The contract for the lot sale obligates the developer to deliver an improved lot within one year; (2) the contract for the mobile home obligates the dealer to install the mobile home within two years from the date of the sales contract for either the lot or mobile home, whichever is earlier; and (3) payments on the lot and mobile home are deposited in an escrow account for the purchaser until the mobile home is installed on the lot and title to the mobile home and lot passes to the purchaser. Since an improved lot exemption was enacted by the Congress with specific criteria, a new expanded regulatory exemption would be inappropriate. However, in appropriate circumstances where the purchaser would be adequately protected, the Department will consider a no-action position for such subdivisions.

Section 1710.14(a)(1) has been amended to delete the single transaction exemption provision and § 1710.14(a)(2) has been redesignated § 1710.14.

There were comments urging retention of a single transaction exemption. However, the great majority of eligible situations on which single transaction exemptions have been issued in the past are now covered by the new self-determined regulatory exemptions of § 1710.13. Unaddressed situations could be the subject of a No Action Letter request.

The new limited offering exemption under § 1710.14 has been installed as a self-determined exemption. Notice to HUD is required but the submission of extensive documentation is no longer required and HUD's approval is not required. The new provision is designed to provide an exemption for the developer of a site containing fewer than 200 lots who promotes the site locally without using sophisticated marketing techniques to attract purchasers. The land sales industry's comments and HUD's experience have demonstrated that developments were often precluded from qualifying for the previous limited offering exemption. Therefore, § 1710.14 has been amended to permit sales to non-residents if such sales are incidental to the logical promotion of the subdivision to the local market. This may occur, for example, when the local community is located on a State border. HUD may periodically examine the advertising and promotional media and methods used by a developer claiming exemption under this provision to determine whether the sales program is intended to attract the permanent residents of the local community or whether the promotion is more broadly directed. The use of marketing techniques and media which attract persons residing beyond the local community would disqualify a subdivision for the exemption if the promotion could be logically confined to the residents of the local community.

Due to the various geographical characteristics and population densities which exist throughout the United States, a precise definition of "local community" which can be uniformly applied cannot be made. Therefore, eligibility criteria for the exemption have been established which, for purpose of this exemption, will be used to determine the local nature of the offering.

Several comments were received which indicated concern that HUD's policy with regard to the use of the telephone and advertising could be unduly restrictive so as to make the new local offering exemption virtually unavailable to developers. It is HUD's position that the normal business use of the telephone and the mails to respond to inquiries from prospective purchasers would not disqualify a subdivision for this exemption.

However, it remains HUD's position that the use of marketing techniques such as direct mail or telephone solicitation, offers of gifts, trips or other such forms of promotion as a means to induce purchasers to visit the subdivision or purchase a lot would be unacceptable for purposes of the exemption.

Comments received pointed out that it is not customary to use general warranty deeds in some jurisdictions. In response to the comments, the local offering exemption was amended to accept a provision for the delivery of a deed other than a general warranty deed if such deed is commonly used in the area where the subdivision is located. For example, a provision for delivery of a special warranty deed will be acceptable for subdivisions if it is shown that as a matter of custom in the subdivision's location, general warranty deeds are not given. However, regardless of the type deed used, the deed must be free of blanket encumbrances at the time of delivery.

The new local offering exemption requires that the purchaser make an on-site inspection of the real estate prior to purchase and that the developer and buyer affirm in writing that such inspection was made. The developer must retain these affirmations for at least three years.

Further, to qualify for the local offering exemption, the developer must specify within the terms of the purchase agreement whether improvements such as roads, sewers, water, utilities or amenities will be provided by the developer or if the responsibility for such installation has been left to the purchaser. The contract must also indicate who is responsible for the maintenance of the above stated improvements since the maintenance can be as costly as the installation.

Based upon comments received, the exemption was revised to require that the purchase agreement contain a non-waivable provision for a 3-day cooling off period during which the purchaser may cancel the agreement for any reason and receive a complete refund of all monies paid. The cooling off period originally proposed was 14 days.

A new restriction was added to the proposed exemption in response to comments received. Any lots located within a flood plain, or a flood prone area as designated by a Federal, State or local agency will be disqualified for the exemption unless the community in which the site is located is participating in the Federal Flood Insurance Program.

The most significant feature of the new local offering exemption is that it is now self-determined which will result in a paperwork and cost savings for both developers and HUD.

The proposed regulatory exemption for primary homesites which was designated Section 1710.15 has been withdrawn due to the new statutory exemption contained in the Housing and Community Development Amendments of 1978 and reflected in these regulations as Section 1710.12. The proposal was intended to apply to subdivisions similar to those that will now qualify for the statutory exemption. Section 1710.15 has, therefore, been deleted.

Section 1710.16 sets forth instructions to developers on how to obtain an Advisory Opinion.

Section 1710.18 has not been changed.

General Registration Requirements

The Sections dealing with full registration have been reorganized in order to provide continuity in the instructions for both state and federal filings.

Duplication of information between the Property Report portion and the Additional Information and Documentation portion has been eliminated. The amount of required documentation has been reduced. Both of these reductions have been accomplished without diminishing consumer protection to any significant degree. Based upon HUD's experience, it was felt that much of the documentation eliminated was of marginal usefulness or could be supplanted by reliance upon field inspection.

Section 1710.20 has been retitled, rearranged and rewritten for clarity. The requirement that filings be delivered by specific methods has been deleted, leaving the mode of delivery to the discretion of the developer.

Section 1710.21 has been retitled and rearranged to consolidate into one place instructions as to when an initial or consolidated Statement of Record is to be used.

In response to comments received, § 1710.22(a) clarifies a long standing policy that a developer who acquires 50 or more lots may have to file a new initial registration even though the acquired lots are part of an existing registration by the selling developer.

Under § 1710.22(b), developers will generally add lots by consolidation unless prior approval of the Secretary is obtained to use a separate initial filing for the additional lots as provided in § 1710.22(e).

Sections 1710.22(d) and 1710.22(f) discuss current policies that a consolidation serves to amend prior Statements of Record and that lots which have been deleted from prior registrations by the developer must be re-registered before being sold or leased.

Comments suggesting that consolidated filings are unnecessary for additional lots in the same subdivision must be rejected as being inconsistent with Section 1404(a) of the Act which prohibits the sale or lease of unregistered lots. However, § 1710.22(c) has been rewritten to simplify and reduce the information to be submitted as a consolidated Statement of Record.

In order to file a consolidated Statement of Record, a developer will need only to file those pages of the Statement of Record which reflect changes from the last effective filing. It shall contain a recapitulation or listing of each of the headings contained in the Additional Information and Documentation portion which will indicate whether there has been a change, new information or incorporation by reference under each of those headings. New documentation necessary to support the additional lots being registered and any changes in disclosure should be furnished, as shall an affirmation.

As a result of comments on the proposed changes to § 1710.23, which would have required financial statements to be included with each amendment whenever the statement on file was over a year old, it has been determined that this requirement would be incorporated into the procedure set out in § 1710.212(d) for financial reporting.

Section 1710.25 has been redesignated as § 1710.52.

Section 1710.26 has been redesignated as § 1710.54.

Section 1710.27 has been redesignated as § 1710.56.

Section 1710.32 has been redesignated as § 1710.29 and has been retitled and rewritten for clarify with no substantive change.

Section 1710.35 is amended to revise the fee schedule for computing fees required to be paid under initial filings, consolidated filings, inital state filings, and advisory opinions. The present fee schedule has been effective since April 28, 1969 and does not realistically represent current costs. No substantial comment was received on this proposal.

Section 1710.45 has been rewritten for clarity. In addition, § 1710.45 (b)(2) and (b)(3) have incorporated the provisions in § 1720.235 which allow a developer to request a hearing when suspension orders are issued under these sections.

Filings Submitted Through Accepted States

Sections 1710.52, 1710.54, 1710.56, 1710.58, and 1710.59 are new numbers given respectively to currently effective §§ 1710.25, 1710.26, 1710.27, 1710.115 and 1710.120. This rearrangement will bring all of the state filing sections together in one place and make them easier to use.

These paragraphs have been rewritten and reorganized for clarity and to conform with some changes made in material required in federal filings. Because of this reorganization, the elimination of cross-references and the reduction in duplication, it is felt that guidelines for state filings are no longer necessary. HUD does not propose to issue guidelines on state filings.

However, in cooperation with the State of California, a check-list has been developed to assist the state officials with their examination and preparation process. Since this should prove beneficial to others, a sample of that check-list will be made available upon request. Consideration is being given to developing a similar check-list to facilitate compliance with federal filing requirements.

It is anticipated that the check-list will greatly improve the disclosure compliance of California filings and reduce significantly the necessity for amendments.

The disclosure required by a state filing will be expected to be equivalent to that in a federal filing. Therefore, the disclosure required in the Federal Property Report can serve as a guide for the information expected to be contained in a State report. Section 1710.52 provides general standards for state filings and confirms that developers are required to furnish HUD with three copies of the final version of the Property Report.

Section 1710.56 details the requirements for amendments and consolidations to state filings.

Section 1710.58 identifies the major items which must be added to state reports such as; a cover page, "Risks of Buying Land", and a receipt, agent certification and cancellation page.

Section 1710.59 contains the format and instructions for the Statement of Record for state filings. Except for the heading, it allows information or documents already included in the state material to be incorporated by reference, thus eliminating duplication. It imposes the same requirements for two copies of a general plan of the subdivision, financial information, an annual notice of activity, information on prices, types of sales, marketing, violations and litigation as those for federal filings.

Federal Filings—Format and Instructions

Sections 1710.100 and 1710.102 outline the format for the Statement of Record and provide general instructions for preparation.

Section 1710.100 defines the Statement of Record as consisting of two portions; the Property Report portion and an Additional Information and Documentation portion.

Section 1710.102 gives general instructions for the preparation of the Statement of Record. It sets the standards for the preparing, printing and binding of the Statement of Record and for the final version of the Property Report and the identification of documents.

Because of numerous comments that the use of red ink for warnings would

substantially increase the cost of the final version of the Property Report, §1710.102(e) has been changed to allow warnings to be typed in capital letters and enclosed within a "boxed" line in lieu of red ink printing.

Sections 1710.102(g) and 1710.200 have been revised to provide that information and documentation and related disclosure items are to be placed together.

Comment was received objecting to the terminology in § 1710.102(e), as proposed, requiring the "best alternative assurance available" as being unclear when the documentation required in the Statement of Record cannot be submitted. HUD believes that the Secretary must have some latitude to allow for cases where the precise required documentation is not available. Sections 1710.102(k) and (l), have allowed for modifications in format and content of the Property Report and substitution of the best alternative documentation in appropriate cases.

Section 1710.102(m) includes a provision for the delivery of the Property Report in a foreign language to conform to § 1715.25(g).

Property Report—Format and Instructions

Section 1710.105–118 are paragraphs which give detailed instructions for the preparation of the Property Report portion of the Statement of Record. The most radical change in this portion is from a question and answer format for the Property Report to one of narrative style together with a new sequence for presentation of the information. Other changes are as follows:

Section 1710.106(a) provides for a Table of Contents to enable the prospective pruchaser to more easily locate items included in the report.

Section 1710.106(b) requires the use of the pronouns "you" and "your" for the purchaser and "we", "us" and "our" for the developer to make the Property Report more readable. It further reduces the likelihood that prospective purchasers will mistakenly believe that the report is prepared by a government agency or independent party.

Section 1710.107(a) "Risks of Buying Land" replaces the Special Risk Factors now used and are general paragraphs to alert the purchaser to some of the problems which may arise in connection with the transaction.

These paragraphs generated a great deal of comment and suggestions for revision. Most commenters argued that these blanket statements would not apply in every instance and could be misleading. The "Risks of Buying Land" have been substantially revised as a result of the objections raised. Also, a certain paragraph of the "Risks of Buying Land" may be omitted if the content of the paragraph does not apply to the subdivision.

Section 1710.107 (b) notifies the purchaser, when appropriate, that warnings appear in the text of the report.

Section 1710.108 provides information as to the number of lots covered in the report; the location of the subdivision; its estimated size and identifies the developer. A telephone number is provided for contact with the developer.

Section 1710.109 covers property report disclosure requirements for title and related subjects.

Objections were made to the introductory statements required by § 1710.109 (a)(1). These statements have been amended to clarify that the purchaser will not receive legal title for his lot until he receives a deed.

There were objections to the mandatory inclusion of a statement required in § 1710.109 (c) (2) (i) if the release provisions of the blanket mortgages have not been recorded. In certain cases the commenters believe that subdivision trusts or other arrangements will adequately protect the purchaser regardless of whether the release provisions have been recorded. If the developer can show that a particular arrangement would fully protect the purchaser, the Secretary may allow, under § 1710.102 (k), a modification of the content of this statement.

Comments were received that HUD should amend § 1710.109 (e) (1) to allow any escrow arrangement, permitted under local law, to meet the requirements of this subsection. Because of the crucial importance of the escrow account to the purchaser, OILSR believes that an independent third-party escrow would best assure the protection of the purchaser's investment. Therefore, in order for it to be represented that there is an escrow account which protects the purchaser's down-payments, deposits or installment payments, the requirement that they be placed in a third-party-controlled escrow account is retained, even though state law allows other arrangements.

Several commenters argued that the required statement in § 1710.109 (f) (1) (ii) should not apply to subdivisions where local zoning ordinances would prescribe the permitted uses of the land. This required statement has been amended to replace the words "specific controls" with the words "restrictive covenants".

Comments were received that the cost of the staking and marking of the lots need not be included in § 1710.109 (g) (3) if the developer will furnish these services prior to the sale of the lots. This section has been amended to allow the omission of this information when the developer will complete these services before the lots are sold.

Numerous commenters remarked that the requirements in § 1710.109 (g) (5) for reporting the results of any environment studies were too broad. This section has been revised to require that the developer only discuss the results of environmental impact studies which consider the effect of the subdivision on the surrounding area.

Information has been included as to the proper state agency to which inquiry may be made to determine if an environmental impact study has been made and where it may be reviewed.

Section 1710.110 gives information on roads providing access to the subdivision. The basic information is the same as that presently required. Some questions have been added for clarity and to allow the developer to cover, initially, situations that might have been the subject of a letter of deficiency in the past. A date for the starting of construction is now required.

In § 1710.110 (b) (3), the instructions for the completion of the chart have been clarified. Also, the chart headings have been standardized for all charts in §§ 1710.110, 1710.111 and 1710.114.

Section 1710.111 covers the utility services to the subdivision. The water and sewer sections have been expanded to consider more methods of providing these services so that the developer can make proper disclosures on the first submission. The present and future capacity of central systems will now be disclosed. Possible costs to the purchaser are more fully explored. The information desired, including construction starting date, on all utilities is more clearly stated.

One comment was received objecting to the instructions in § 1710.111(a)(1)(ii)(D). That subsection would have required the disclosure of any objectionable taste, odor or color in the water supply. Because these determinations are highly subjective, these instructions have been deleted from this subsection.

Several commenters questioned the requirement in §§ 1710.111(a)(1)(ii)(L) and 1710.111(b)(1)(iii)(K) that the financial statements of the supplier of the service be submitted to indicate its ability to perform its obligations in lieu of making a negative statement that there is no assurance of continuous

service at reasonable rates. These sections have been amended to delete this requirement and they now require that a statement be made that neither the operation of the water system nor the rates are regulated by a public authority if the supplier of water is other than a governmental agency or entity which is regulated and supervised by a governmental agency.

Section 1710.111(a)(1)(ii)(M) has been amended to delete the requirement concerning the submission of title information as to the developer's ownership of the central water system.

Sections 1710.111 (c), (d) and (e) have been revised to require only the disclosure of construction costs which the purchaser will pay for electricity, telephone and fuel service. The normal and usual connection fees charged by utilities are omitted. Comments have been made that frequent changes in connection fees have placed an undue burden upon developers for amendments. Because these fees, as are service rates, are normally controlled by governmental agencies and are usually adjusted in small amounts, it is not felt that their disclosure is necessary.

Suggestions were made that the cost and availability of propane gas not be required in § 1710.111(e) if all electric homes are the norm and a natural gas pipeline has not been extended to the subdivision. This Section has been amended to require cost information only for the energy source, other than electricity, which will be used.

Section 1710.112, requires disclosure as to the developer's financial condition only when there has been a deficit in retained earnings, an operating loss or a qualification in an auditor's opinion. It also requires that the purchaser be notified that copies of the developer's latest statements are available upon request.

Section 1710.113 which deals with disclosure about local services has been reduced and simplified.

Section 1710.114 sets out several new Property Report disclosure requirements relating to recreation facilities. Criteria for determining which recreational facilities are to be included in the disclosure are established.

Section 1710.114(c)(4) has been retitled "transfer of the facilities". The instructions clarify which disclosures must be made about the transfer of the recreational facilities in the future.

Section 1710.114(c)(7), which required disclosure regarding television, has been eliminated.

Section 1710.115 covers matters dealing with the general topography, flooding, hazards, nuisances, climate and occupancy under the general heading "Subdivision Characteristics and Climate." Some new criteria have been added so that the developer may determine when warnings will be necessary as to steep slopes and fire dangers.

Section 1710.115(a) has been revised and the required warning has been rewritten for clarity.

Section 1710.116 provides for disclosure of additional information about any property owners' associations, taxes, violations and litigation, resales and unusual situations.

The paragraph on the property owners' association will inform purchasers more clearly of their responsibilities to, and benefits from, the association and indicate the developer's relationship with the association.

Section 1710.116(b)(2) has been changed to require the disclosure of the annual assessments to be paid to any special improvement district and the purchaser's obligation to retire the debt of the district.

The subheading for § 1710.116(d) has been changed to "Resale or Exchange Program." One comment was received recommending that more information be included about any lot exchange program. This section has been amended specifically to disclose whether there are a sufficient number of lots available for exchange, or whether interest will be credited to the exchange lot.

The paragraphs for unusual situations (§ 1710.116(e)) provide information in those instances where the subdivision will involve leases, where sales are on a time sharing or membership basis or where the subdivision is located in a foreign country.

A paragraph has been included under § 1710.116(f), to deal with Equal Opportunity in Lot Sales.

Numerous commenters remarked that the requirement in § 1710.117(a) for a cost sheet would be of limited value because of potential errors resulting from inadvertant mistakes by salesmen. Comments were also received that the tax figure in the cost sheet should be based on the value of the lot at the time of sale rather than at transfer of title; that interest charges be included; that the word "estimated" be inserted prior to the word "total" and that the cost item "recreational use fees" be eliminated.

The instructions already allow for the figures to be printed when they are uniform throughout the subdivision to reduce the risk of error. However, revisions have been made to accommodate a number of these comments.

The heading for § 1710.118 has been changed to "Receipt, Agent Certification and Cancellation Page." It has been revised to facilitate the appearance of the required information on a single page. Section 1710.118(e) has been added to state that notification of recission by mail shall be considered given at the time post-marked.

Additional Information and Documentation—Format and Instructions

The sections numbered in the two-hundred series of Section 1710 contain the detailed instructions for the preparation of the Additional Information and Documentation portion of the Statement of Record. While some of the documents required by the present regulations have been eliminated, there are a few new documents or reports which have been added because of comments received or because experience has shown they are necessary in the interests of consumer protection.

Some clarification and simplification has been made in § 1710.200. The need to cross-reference attached documents has been eliminated by requiring the supporting material to be placed immediately after the pages of the sections containing the answers which they support. By having the answers and documents adjacent to each other, there will be less likelihood of documents beings overlooked and the examination process will not be delayed because of missing material.

Section 1710.208(c)(3) has been revised to require that the scope of responsibility of the authorized agent be stated. It further contains a notification that any change of the authorized agent will require an appropriate amendment.

Section 1710.208(d)(2) establishes criteria for general plan maps of the subdivision and requires the submission of two copies for the use of the OILSR Examination and Field Review Divisions.

Comment was received which recommended that a signed mortgagee's policy of title insurance be an acceptable form of title evidence. Section 1710.209(c)(1) (formerly § 1710.209(b)(1)) has been amended to state that a signed mortgagee's policy of title insurance which otherwise complies with the requirements of that section will be acceptable. This section has also been amended to state specifically that title binders and

commitments for title insurance are unacceptable forms of title evidence.

One commenter requested that the instruction for plat maps set forth in § 1710.209(g)(1)(iv) be amended to state that the plat or map "should" rather than "shall" comply with certain standards. This Section has been amended accordingly.

Several commenters remarked that the requirement to submit copies of contracts for completion of facilities noted in §§ 1710.210, 1710.211, and 1710.214 is unduly burdensome and should be eliminated. These Sections have been amended to delete this requirement.

Sections 1710.211 (c) and (d) have been amended to delete the requirement for letters from the telephone and electric companies stating that they will provide service to the subdivision.

One commenter suggested that § 1710.211(e) be deleted because it may be difficult to obtain documentation from small retail propane and butane dealers. The requirement for this documentation has been eliminated and this Section has been deleted from the Regulations.

Numerous comments were received objecting to the requirement for the submission of certain development costs as set forth in § 1710.212(b)(3) (formerly § 1710.212(k)). These comments alleged that this is business information which should not be made public; and that requesting such information is an invasion of privacy. Others indicated no objection to placing the information in the Additional Information and Documentation portion but did object to automatic inclusion in the Property Report portion.

A large percentage of the complaints received by HUD from purchasers concern unfinished or inadequate amenities. Because of this, the purchaser is unable either to use the lot purchased or to dispose of it for the price paid. This situation is usually caused by poor planning or the absence of a feasibility study.

Therefore, HUD believes this information is of vital importance for consumer protection. However, as a result of the comments, the disclosure of this information will not be required if the subdivision or common promotional plan contains less than 1000 lots and will not be required, automatically, in the Property Report portion. After a review of the information presented in § 1710.212(b)(3), the Secretary may require that a statement or warning be included in the Property Report portion.

Section 1710.212(c) (formerly § 1710.212(a)(i)) has been amended pursuant to comments received to state that financial statements must be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants.

It has always been the intent of HUD that developers would maintain current financial statements so that they would be able to make necessary amendments to their filing and currently inform purchasers of vital financial information. Some developers have not prepared statements on an annual basis. This has caused difficulty in preparing statements when it became necessary to update their filings. To clarify HUD's position and because HUD feels that the current financial condition of the developer is of utmost concern to lot purchasers, provisions were made in §§ 1710.23(b)(3) and 1710.310 of the proposed regulations for the submission of current financial statements, either with amendments or with the annual report of activity. There was only one adverse comment on this proposal.

Because of comments received, the requirements dealing with the annual furnishing of financial statements have been consolidated into one place, § 1710.212(d), and deleted from §§ 1710.23(b)(3) and 1710.310. Up-to-date statements will be furnished within 120 days of the close of the developer's fiscal year unless already submitted or unless the developer no longer has an active sales program. HUD believes that disclosure of the current financial condition of a developer is essential for consumer protection.

Section 1710.212(e)(3) (Formerly § 1710.212(b)) has been expanded to allow developers to utilize legal arrangements which guarantee the delivery of a deed to the purchaser (upon payment of no more than the full purchase price of the lot) as a qualifying factor for the various exceptions to the requirement for audited financial statements.

Comments were received that the requirement in § 1710.212(e)(3)(i) (Formerly § 1710.212(b)(3)) requiring audited financial statements if a subdivision has more than 300 lots was too restrictive. This section has been amended to delete the lot limit qualification leaving only the limitation as to a sales value of $1,500,000. This is an increase of $1,000,000.00 over the present regulations. The other new exceptions from audited statements were retained.

One commenter requested that §1710.212(g) be broadened to include the substitution of the parent's unaudited financial statements for the interim period. This section has been amended to delete any requirement for the submission of financial statements from the subsidiary.

Section 1710.22(h) (Formerly § 1710.212(e)) has been amended to state that the Secretary may accept disclaimed as well as qualified opinions from accountants in appropriate circumstances.

Section 1710.310 requires a developer, when no amendments or consolidations have been made during the twelve month period since the last effective date was issued, to file a notice as to whether it is still engaged in land sales activity. This notice is to be filed within 30 days of the anniversary of the last effective date issued for a filing. It may be submitted along with the annual financial statements required by § 1710.212(d), if the developer wishes. The purpose of this notice is to eliminate inactive filings from HUD's inventory of subdivisions and to keep basic information current.

Compliance With Effective Date

Section 1710.400 describes when a new or existing filing must comply with the provisions of these revised regulations.

Any intitial exemption request, filing, consolidation, amendment or other action received by HUD on or after the effective date of these regulations must comply with the provisions of these regulations. Any amendment or consolidated filing must bring the entire registration into compliance. Any existing exemptions or exemptions in process prior to the effective date of these regulations need not be revised but must continue to meet the standards of the applicable exemption provision.

When amendments are filed to comply with these revisions it may not be necessary to include the entire Additional Information and Documentation portion. Documents required by those revised regulations, and not previously submitted, and those in which there has been a material change must be furnished. In all cases, all financial information and documentation required by § 1710.212 must be included. The new Property Report format must be used and it must contain all required information. However, a developer amending an existing filing need not resubmit any documentation presently filed that is still current and accurate.

Consolidated filings must comply with all requirements of the revised regulations.

If no amendment or consolidation is made to an existing registration, an outside date is established for compliance.

Registrations which received their latest effective date on or before December 31, 1973 must be brought into compliance with these regulations within the first year after the regulations become effective unless earlier amended.

Registrations whose latest effective date is on or after January 1, 1974, will have up to two years after the regulations become effective to comply. The exact date for compliance is determined by the month in which the last effective date was received. For example, a developer whose last effective date was October 15, 1976 would be required to comply no later than October 31, 1980.

If, at the time compliance is required, there are fewer than fifty lots remaining in the registered offering, the registrant may submit an affidavit to that effect in lieu of refiling. While conversion to the new Property Report format and related documentation will not be required, material changes will necessitate appropriate amendment within the existing format.

As a result of comments received, § 1710.400(c) allows a six-month period for a developer to convert from the advertising disclaimer statement required by § 1715.10(a) of the December 1, 1973 regulations. This should provide sufficient time for advertising planning and to exhaust the stock of material on hand.

Advertising, Sales Practices, Posting of Notices of Suspension

Comments were received on the wording of the advertising disclaimer in § 1715.10(a). It was suggested that, since the Property Report was reviewed by HUD or since some permits might have been secured from federal agencies, the disclaimer was inaccurate. No change has been made in the disclaimer. The purpose of the new language is to conform with the cover sheet of the Property Report. The fact that the Property Report has been reviewed or that federal permits have been issued does not mean that any federal agency has ruled on the merits or value of the property.

In answer to a comment, classified advertising of less than one column of print wide and less than 5 lines long has been added to § 1715.10(c) as a category in which the disclaimer need not appear.

One comment was made that § 1715.15 (m) would prohibit the use of master plans in advertising. There is no change in the substance of this paragraph from the present regulations. It has simply been rewritten for clarity. It requires that, if the lot size is indicated, there shall also be an indication as to the land available for use after deducting any easements (easements for utilities serving the lot are not included).

There were comments that a developer should not have to deliver a Property Report to casual "lookers" as opposed to actual purchasers. The Act provides, in Section 1404(a), * * * that it shall be unlawful * * * to sell or lease a lot * * * unless a printed property report * * * is furnished the purchaser. In Section 1402(g) of the Act, "purchaser" is defined as "an actual or prospective purchaser or lessee of any lot in the subdivision". To satisfy the comments and to clarify the intent of § 1715.25(f), this sub-paragraph has been revised to show that a person who exhibits an interest in buying or leasing a lot is entitled to receive a Property Report.

Cost Impact

One comment was received concerning the cost of converting existing registrations to the revised requirements, both in preparation by the developer and the time required for examination.

HUD believes that both initial and consolidated filings under this amendment will require less time and expense on the part of developers. This belief is based on the simple premise that few new substantive requirements have been imposed, a number of specific requirements have been omitted, and an effort has been made to simplify and facilitate the filing process. Documentation has been reduced and unnecessary duplication of disclosure has been eliminated by simplifying and reorganizing the format. Clearer instructions have been provided which set forth policy positions which previously were not published.

The threshhold for the requirement for audited financial statements has been raised significantly. This will undoubtedly reduce cost for those developers who can now qualify for the expanded exception.

Amendments filed by developers to comply with these Regulations will obviously involve an expense. However, over a two-year period, approximately two-thirds of the active registered developers could be expected to amend their registrations without regard to compliance with these Regulations. The true additional cost in such cases, would be that attributable to revising the Property Report format to a narrative style since the file would need to be updated in any event.

During the public hearings on the proposed regulations, HUD solicited comments on the costs associated with registration. Few comments were received. Subsequently HUD made direct inquiry to a number of practitioners and received estimates for conforming the Property Report which would indicate that the cost of conforming with these amendments for a 500 lot subdivision would be approximately $2500.00 or a one-time cost of $5.00 per lot. Printing costs could be expected to be around $.50 per copy.

Congressionally mandated staff cuts will undoubtedly affect the speed with which filings can be examined. However, examination of registrations must meet the 30-day deadline. The examination process should be facilitated by the revision of the regulations to require that only the Property Report need be revised rather than a resubmission of the entire filing.

Provision has been made for phasing in the required conversions over a two-year period. Those developers having fewer than 50 lots remaining in a subdivision may comply with these regulations merely by filing an affidavit to that effect. Inactive developers may request a suspension of their registration and be relieved of any compliance requirement.

The exemptions available under these regulations have been expanded to include greater numbers of offerings where registration is not necessary in the public interest and for the protection of purchasers. Sections 1710.11 and 1710.12, 1710.13(b)(3) and § 1710.14 all contain provisions that lower the threshhold for exemption eligibility and dispense with registration costs for a greater number of developers. Sections 1710.13(b) (4) through (9) create six new self-determining exemptions that obviate the need to register lots in certain cases where the purchaser should not require the protection of disclosure or where the low volume or scattered location of lots makes disclosure of minimal value.

In order to identify and deal with potential problem areas, intensive training courses have been conducted for the OILSR staff. No new or unexpected problem areas have been identified in this training process.

HUD plans to conduct workshop sessions in several areas of the country to familiarize developers with these revised regulations and to assist and advise them regarding the registration process. These workshops are scheduled as follows:

1. Washington, D.C.—May 8, 9, 10, and

11, 1979, GSA Auditorium, 7th and D Streets, S.W.

2. Kansas City, Mo.—May 14 and 15, 1979, Holiday Inn Sports Complex, 4011 Blue Ridge Cutoff at I–70.

3. Phoenix, Ariz.—May 17 and 18, 1979, Civic Plaza, 225 E. Adams.

4. Orlando, Fla.—May 21 and 22, 1979, Officers Club, Naval Training Center.

5. Dallas, Tex.—May 24 and 25, 1979, The Hilton Hotel, 914 Commerce Street.

Instructional materials, such as an annotated sample Property Report and a checklist of required materials for developers should help eliminate time consuming problems and simplify both the preparation and examination of filings.

A summary of major changes effected by these revised regulations which could be expected to affect costs together with a comparison of former provisions and a statement of their expected impact is provided immediately following.

Summary of Major Changes Affecting Cost

Revised Section Number* ( )	Present Regulation	Revised Regulations	Impact
1710.10(c)	Exempts the sale of improved land on which there is a residential, commercial or industrial structure.	Clarifies that the exemption includes condominiums [1].	Clarifies that the exemption relates to condominiums.
1710.10(j)	Exempts the sale of land in zoned industrial park	Clarifies that the exemption applies to parks which are not zoned but restricted to industrial use by recorded restrictions [1].	Eliminates the cost of compliance with the Act on bona fide industrial parks which are not subject to a zoning ordinance.
1710.11	Requires that a complete copy of the Statement of Reservation, Restrictions, Taxes and Assessments be submitted each year for OILSR review.	Requires only one copy of the statement with affidavit that the copy is an exact duplicate of that given purchasers.	Substantial paperwork reduction in reports required of developers claiming exemption under this provision.
1710.11	Requires that documentation be submitted and approval granted for lots reacquired by the developer.	Developer may resell lots taken back into inventory without notifying OILSR as long as the lots are sold initially under the exemption and continue to be eligible at the time of resale.	Reduces paperwork and related costs incurred by qualified developers and shorten the time span between reacquisition and resale.
1710.11	Disqualifies land for exemption on which there is U.S. Land Patent reservation.	Removes Patent reservations as a restriction on qualifying for the exemption [1].	Developers west of the Mississippi can now qualify for the exemption.
1710.12	Non-existent	Provides an exemption for fully improved single family homesites developed in accordance with County or municipal minimum standards [1].	Relieves developers of the requirement of filing in regulated jurisdictions.
1710.13(b)(3)	Limits sales of unimprove lots in an otherwise exempt subdivision to 5% or 49 lots.	Raises the limitation to 25%	Permits a developer selling mostly improved lots to sell more unimproved lots to individuals without incurring the cost of registration.
1710.13(b)(4)	Non-existent	Provides a self-determining exemption for lots sold to persons engaged in the land business.	Eliminates the cost associated with registration or filing for an exemption when lots are sold to persons engaged in the land sales business.
1710.13(b)(5)	Non-existent	Provides a self-determining exemption for the sale of a lot adjoining a lot upon which the purchaser has a residence.	Eliminates the cost for a developer to register or seek an exemption for such sales.
1710.13(b)(6)	Non-existent	Provides a self-determining exemption where no more than 12 sales in any calendar year have been or will be made.	Eliminates the cost for a small low-volume, developer to register or seek an exemption.
1710.13(b)(7)	Non-existent	Provides a self-determining exemption for the sale of lots in scattered sites if each site has fewer than 50 lots.	Eliminates the cost for a developer of a subdivision comprised of lots in scattered sites to register or apply for an exemption.
1710.13(b)(8)	Non-existent	Exempts the sale of real estate to a government or government agency.	Eliminates the cost for a developer to comply with the Act on such sales.
1710.13(b)(9)	Non-existent	Exempts the sale of a lot which the purchaser has leased for at least one year and which has been used as the purchaser's primary residence.	Eliminates the cost for a developer to register or seek an exemption for such sales.
1710.14	Sales to non-residents cannot exceed 5% of the subdivision's total sales and all advertising is confined to the state. An exemption order is required.	Removes the 5% sales limitation and permits advertising in the most logical media even if located out-of-state. Reduces the filing requirement to a Notice. No order required-self determining.	Eliminates the cost to a developer to register or seek an exemption on those locally offered subdivisions including those located near State borders.
1710.20	Filings must be submitted by certified mail	Filings may be submitted to OILSR by any means of delevery.	Less filing cost to developer.
1710.22	For consolidations, supporting documentation may be incorporated by reference where it is applicable specifically to both the original filing and to the additional lots. Complete format of Statement of Record and Property Report must be furnished.	Any portion of the Statement of Record which is specifically applicable to both the prior Statement of Record and to the additional submission may be incorporated by reference.	Will reduce the cost and time needed to prepare a consolidated filing by significantly reducing the material required to be submitted.
1710.22(d)	None	Clarification of policy that a consolidation serves to amend the related initial filing.	Eliminates a developers duplication of information in the amendment and consolidation process.
1710.35	Filing fees were set forth in four different schedules which ranged from $125 to $300 for 1–50 lots to $1,000 for 750 to 1,751 lots depending on the type of filing. Fees for exemption advisory opinions were $100.00.	Filing fees are set forth in one schedule with the fees ranging from $300 for 1–50 lots to $1,000 for 501 and over. Fees for exemption advisory opinons are now $250.00.	The amount of the fee will be easier to determine. The new fees will result in increased costs to the developer. This increase is in keeping with the study which Congress requested in the Report on appropriation in 1975. That report directed HUD to reassess its fee structure and either adjust the fees upward so as to cover operating expenses or inform the committee why this is not feasible (Senate Report No. 94–326).
1710.45(b)(2) and (3)	No hearing right is included when a suspension order is issued pursuant to this provision.	Hearing rights are provided after issuance of the suspension.	Developers are afforded an opportunity to present their case for lifting the order. The hearing is before an administrative law judge.
1710.100	Same data required in Property Report as in other parts of the Statement of Record.	Repetition minimized. Reorganized format for clarity	Eliminates duplication and reduces time and cost for a developer to prepare a filing and for HUD to review a filing. Makes the regulations easier to understand.
1710.102 and 1710.115	No standards are included for determining when warnings are necessary for steep slopes and fire dangers. Warnings often must be printed in red.	Provides standards for disclosure of warnings. Red print no longer required.	This will reduce the time and cost of registering by assisting the developer to determine when related warnings are necessary. There will be cost savings for not having to print the property report in two colors.
1710.102	Property Report must be prepared in type size not less than 10 point leaded type.	The developer is specifically allowed to prepare the Property Report on a standard typewriter. (elite or pica or similar type).	Reduces cost of preparation of Statement of Record.
1710.102	Property Report required to be given to purchasers in blue-black or black "ink"	Specifically permits photo-copy	Eliminates confusion as to acceptability of photo-copy and may reduce costs for low volume developers.
1710.105	Cover sheet of Property Report must have red overlay warning.	This warning will not require overlay printing	Reduces printing costs in preparing Property Report.
1710.109 and 1710.212	Restrictive covenants and financial statements must be attached to Property Report.	These items will be immediately available to the purchaser who request them.	Reduces length of Property Report and increases readability for consumers.

Summary of Major Changes Affecting Cost—Continued

Revised Section Number* ( )	Present Regulation	Revised Regulations	Impact
1710.109(g)(5) and 1710.209(g)(2)	None except where permits were required	Disclosure of whether an environmental study has been made. If so, a summary of adverse factors and disclosure of where the statement may be reviewed by the purchaser. If no statement has been prepared a general statement of potential environment impacts must be made.	Purchasers will be advised of adverse factors if a study has been made and informed if no study has been prepared. Some additional cost may be incurred by the developer in determining whether a study has been prepared and summarizing the adverse impacts.
1710.110, 1710.111, 1710.114	No provision for providing information in chart form	If there are separate units or sections in the subdivisions with different completion dates, charts shall be used for reporting status and condition of roads, utilities and facilities.	Increases readability for consumers and simplifies filing requirements for developers.
1710.111	Submission of a letter from the utility supplier	Letter no longer required	Reduces required documentation that must be secured by developers and reviewed by HUD, thereby reducing cost to both.
1710.111	Provide information regarding garbage and trash collection.	No requirement for reporting this information	Reduces required documentation that must be secured by developers and reviewed by HUD, thereby reducing cost to both.
1710.116(b)	None	Includes new disclosure on equal opportunity in lot sales.	This disclosure will serve to inform purchasers about Title VIII Equal Opportunity rules that are applicable to them.
1710.117	None	Requires that the developer include a summary sheet of the major costs to be incurred by the purchaser.	Purchasers have more information upon which to base their decision.
1710.118	The face page of the property report included a provision for acknowledgement of receipt of the property report.	The receipt has been simplified	Ease of readability for the purchaser.
1710.118	None	The agent is required to certify that he has made no representations which are contrary to the information in the property report.	Increased protection to the purchaser by making the agent directly responsible for his representations.
1710.118	None	Provides a Purchaser recission form	Makes it easier for the purchaser to cancel his contract.
1710.208(d)(2)	Requires the submission of the general plan of the development.	Establishes criteria for the preparation of the general plan and requires the submission of two copies.	Should facilitate the filing process.
1710.209	Requires an original or copy of a fee or owners policy of title insurance, a guaranty or guarantee of title, or a certificate of title.	Allows use of mortgagee's title policy to serve as title evidence.	Reduces cost for the developer.
1710.210	Disclosure required on the cross section of the subdivision's roads.	Roads cross section requirement deleted	Reduces required documentation that must be secured by developers and reviewed by HUD, thereby reducing cost to both.
1710.211	A engineer must certify that the subdivision's water supply is adequate for its projected population.	Provided that if the water supplier is not related to the developer, the water supplier can make this certification.	Reduces costs of securing documentation.
1710.211	A local health officer must attest to the chemical purity of the water supply.	If no such official is available an *independent*, licensed private laboratory can make this certification.	Provides more options to developer.
1710.211	Furnish a copy of the financial statement of the supplier of water and sewer service.	Elimination of requirement for financial statement from suppliers of water and sewer.	Reduces required documentation that must be secured by developers and reviewed by HUD, thereby reducing costs to both.
1710.212	Audited financial statements are required unless the developer has fewer than 300 lots and the value of the lots is less than $500,000.00.	The lot criteria is eliminated and the monetary threshold increased to $1.5 million. Subdivisions where promised improvements are either complete or bonded are also relieved of the audit requirement.	Eliminates costs of audited financials by raising the threshold for imposing the requirement. Eliminates costs for any developer meeting exception criteria.
1710.212(b)(3)	None	Requires disclosure of land acquisition or fair market value of land, development and improvement costs and estimated marketing costs or warning that the project feasibility is unknown.	Provides consumers information on project feasibility. May require additional developer effort in making an estimate.
1710.212(d)	None	Financial statements must be and submitted annually no later than 120 days after the close of the developers fiscal year.	Clarifies the intent of the Regulations that the developers financial statements remain current. A slight increase in cost may result from the requirement to submit statements annually.
1710.214	No criteria for determining which recreation facilities will be disclosed.	Defines facilities to be disclosed	Reduces the time required to register by more clearly indicating the facilities required to be disclosed.
1710.215(a)	Requires one copy of the U.S. Geological Survey Map of the area with the subdivision delineated on it.	Requires two copies	Incidential increase in cost for the second page.
1710.216(b)(3)	None	Requires the developer to describe the methods of advertising and marketing to be used in the subdivision.	Provides public with information on the developers marketing program.
1710.52	The state filing requirements are found in various subparts of the regulations.	The state filing sections have been consolidated and clarified.	Makes it easier to use the Regulations.
1710.54	Unclear as to applicability of federal standards to state filings.	Clarifies OILSR requirements pertaining to state filings.	Reduction of disclosure deficiencies for state filings.
1715.25	All property reports prepared in the English language.	If advertising is conducted in a language other than English the property report must be delivered in that language.	Provides persons who speak languages other than English with the disclosures required by the Act.
1710.310	None	Requires that the developer file a Notice of his activity.	Some incidental cost may be incurred by the developer.
1710.400	None	Developers with 50 lots or less remaining to be sold will not be required to bring their registration into conformity with the Revised Regulations.	Cost savings to developers whose sales activities are closing out.

Summary of Major Changes Affecting Cost—Continued

Revised Section Number* ( )	Present Regulation	Revised Regulations	Impact
1710.400	Filings prepared after December 1, 1973 were required to be brought into compliance with the present Regulations. Filings made prior to that date were to be updated only when a material change occured.	Filings must be brought into compliance with the Revised Regulations. Registrations effective on or before December 31, 1973 must be brought into compliance within one year. Registrations effective on or before January 1, 1974 must be brought into compliance by the end of the anniversary month of the last filing in the second year.	The consumers are provided with a more readable property report. Developers making new filings can follow the simpler and less costly filing procedure. Developers who are required to update will incur some increased costs. The updating requirement is staged over two years and as previously noted the smallest developers will not experience the cost. Updating consists of rewriting the property report to include all of the information required under the Revised Regulations, submitting new documentation which is required by the Revised Regulations such as market information and feasibility studies and any material changes which may have occured in the filing.
Various	Requires disclosure of numerous user charges	Eliminates requirement for disclosure of user charges for tennis courts, pool privileges and other similar items.	Reduces the need for developers to file an amendment when certain user charges vary.

*All of these sections are located in 24 CFR.

[1] These changes reflect statutory amendments included in the Housing and Community Development Amendments of 1978.

An Environmental Impact Statement has been prepared in connection with these revised regulations and is available for public inspection at the Office of the HUD Rules Docket Clerk, Room 5216, 451 Seventh Street, SW., Washington, D.C.

All comments received on the draft Environmental Impact Statement were considered in the preparation of the final Statement and of these revised regulations.

These revised regulations are issued under the authority of Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Section 1419, Interstate Land Sales Full Disclosure Act, 14 U.S.C. 1718.

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-10.

Accordingly, Parts 1710 and 1715 of Chapter IX of 24 CFR are revised as follows:

PART 1710—LAND REGISTRATION

Subpart A—General Requirements

Sec.

1710.1 Definitions.
1710.2 Official address.
1710.3–4 [Reserved]
1710.5 General applicability.
1710.6–7 [Reserved]
1710.8 Exemptions—when inapplicable.
1710.9 Available Exemptions—Category Index.
1710.10 Statutory exemptions—No HUD determination required.
1710.11 Statutory exemptions—Secretary must determine eligibility—Procedures for obtaining determination.
1710.12 Statutory exemption—Single-Family Residences—No HUD determination required.
1710.13 Regulatory exemptions—No HUD determination required.
1710.14 Regulatory exemption—Local Offering—Notice to HUD required.
1710.15 [Reserved]
1710.16 Advisory Opinion—Secretary's determination may be requested.
1710.17 [Reserved]
1710.18 No-Action letter—Secretary's determination required.
1710.19 [Reserved]
1710.20 Requirement for registering a Subdivision. Statement of Record—Filing and Form.
1710.21 Effective Dates.
1710.22 Statement of Record—Initial or Consolidated.
1710.23 Amendment—filing and form.
1710.24–1710.28 [Reserved]
1710.29 Use of Property Report—Misstatements, omissions or representation of HUD approval prohibited.
1710.30–1710–34 [Reserved]
1710.35 Payment of fees.
1710.36–1710.39 [Reserved]
1710.40–1710–44 [Reserved]
1710.45 Suspensions.
1710.46–1710.49 [Reserved]
1710.50–1710.51 [Reserved]
1710.52 State filings—in general.
1710.53 [Reserved]
1710.54 State filings—acceptable filings.
1710.55 [Reserved]
1710.56 State filings—amendments and consolidations.
1710.57 [Reserved]
1710.58 State filings—Property Report.
1710.59 State filings—Statement of Record.
1710.60–1710.99 [Reserved]

Subpart B—Reporting Requirements

1710.100 Statement of Record—format.
1710.101 [Reserved]
1710.102 General Instructions for Completing the Statement of Record.
1710.103–1710.104 [Reserved]
1710.105 Cover Sheet.
1710.106 Table of Contents.
1710.107 Risks of Buying Land, Warnings.
1710.108 General Information.
1710.109 Title and Land Use.
1710.110 Roads.
1710.111 Utilities.
1710.112 Financial Information.
1710.113 Local Services.
1710.114 Recreational Facilities.
1710.115 Subdivision Characteristics and Climate.
1710.116 Additional Information, Listing of Lots.
1710.117 Cost Sheet and Signature Page.
1710.118 Receipt, Agent Certification and Cancellation Page.
1710.119–1710.199 [Reserved]
1710.200 Instructions for Additional Information and Documentation.
1710.201–1710.207 [Reserved]
1710.208 General Information.
1710.209 Title and Land Use.
1710.210 Roads.
1710.211 Utilities.
1710.212 Financial Information.
1710.213 [Reserved]
1710.214 Recreational Facilities.
1710.215 Subdivision Characteristics and Climate.
1710.216 Additional Information.
1710.217–1710.218 [Reserved]
1710.219 Affirmation.
1710.220–1710.299 [Reserved]
1710.300–1710.309 [Reserved]
1710.310 Required Notice as to activity.
1710.311–1710.399 [Reserved]
1710.400 Application of Regulations to Existing and Future Filings.
1710.401–1710.999 [Reserved]

Authority: Pub. L. 90–448, 82 Stat. 476, 590; 15 U.S.C. 1701, et seq.

Subpart A—General Requirements

§ 1710.1 Definitions.

As used in this chapter:

(a) "Act" means the Interstate Land Sales Full Disclosure Act, as amended, 82 Stat. 590, 15 U.S.C. 1701, which became effective in its original form on April 28, 1969.

(b) "Advisory Opinion" means the formal written decision of the Secretary, relative to §§ 1710.10, 1710.12, 1710.13 or 1710.14 as to whether registration is required in a given situation based upon facts submitted to the Secretary.

(c) "Agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services.

(d) "Available for use" means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

(e) "Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement, affecting a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessments by any public authority.

(f) "Date of filing" means the date a Statement of Record, amendment or consolidation, accompanied by the applicable fee, is received by the Secretary.

(g) "Developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots.

(h) "Interstate Commerce" means trade or commerce among the several States or between any foreign country and any State.

(i) "Lot" means any portion, piece, division, unit, or undivided interest in land if such interest includes the right to the exclusive use of a specific portion of the land.

(j) "Offer" means any inducement, solicitation, or attempt to encourage a person to acquire a lot.

(k) "OILSR" means the Office of Interstate Land Sales Registration.

(l) "Owner" means the person or entity who holds the fee title to the land and has the power to convey that title to others.

(m) "Parent Corporation" means that entity which ultimately controls the subsidiary even though the control may arise through any series or chain of other subsidiaries or entities.

(n) "Person" means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate.

(o) "Principal" means any person or entity holding a 10%, or more, financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

(p) "Purchaser" means an actual or prospective purchaser or lessee of a lot.

(q) "Rules and Regulations" refer to all rules and regulations adopted pursuant to the Act, including the general requirements published in this part.

(r) "Sale" means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms "sale" or "seller" include in their meanings the term "lease" and "lessor".

(s) "Secretary" means the Secretary of Housing and Urban Development or a duly authorized representative.

(t) "Senior executive officer" means the individual of highest rank responsible for the day to day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

(u) "Site" means a group of contiguous lots or a group of lots designated or known by the same or similar name, whether such lots are actually divided or proposed to be divided. For the purpose of this definition, lots will be considered contiguous even though contiguity is incidentally interrupted by a road, a small body of water, recreational type facility or in any similar manner.

(v) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(w) "Start of construction" means breaking ground for building a facility followed by diligent action to complete the facility.

(x) "Subdivision" means any land, located in any State or in a foreign country, which is divided or proposed to be divided into 50 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan; and where subdivided land is offered for sale or lease by a single developer or a group of developers acting in concert and where such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.

§ 1710.2 Official address.

The official address of the Secretary for delivery of all mail, telegrams, information, filings, registration, and other material required by or relating to the Act or this chapter is:

Department of Housing and Urban Development, Office of Interstate Land Sales Registration, 451 Seventh Street, SW., Washington, D.C. 20410.

§ 1710.5 General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots, making use of any means or instruments of transportation or communication in interstate commerce or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part; and the developer furnishes each purchaser with a printed Property Report, meeting the requirements of the provisions of this part, in advance of the signing of any contract or agreement for sale or lease by the purchaser. As used in this part "lot" shall include lots located in any state or in a foreign country.

§ 1710.8 Exemptions—When inapplicable.

The exemptions set forth under §§ 1710.10, 1710.11, 1710.12, 1710.13 and 1710.14 of this part will not be applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

§ 1710.9 Available exemptions—Category Index.

This section sets forth a summary of the different types of exemptions that are available to developers. The referenced Sections more fully describe the requirements of each exemption.

(a) Transactions which may be exempted due to the nature of the real estate or related items sold. These exemptions are self-determined. There is no requirement to consult or file with HUD; however, Advisory Opinions may be requested as described in § 1710.16:

(1) The sale or lease of lots in a subdivision *all* of which are five or more acres in size (see § 1710.10(b));

(2) The sale or lease of land on which there is a building, or where there is a contract obligating the seller to build such a structure on the lot within a period of two years (see § 1710.10(c));

(3) The sale of evidences of indebtedness secured by a mortgage or deed of trust (see § 1710.10(e));

(4) The sale of securities issued by a real estate investment trust (see § 1710.10(f));

(5) The sale or lease of cemetery lots (see § 1710.10(h));

(6) The sale or lease of real estate zoned for commercial or industrial development or which is restricted to such use by a declaration of covenants, conditions and restrictions recorded in the appropriate jurisdiction when certain other characteristics exist (see § 1710.10(j));

(7) The sale or lease of lots whose price is less than $100 provided the purchaser is not required to buy more than one lot (see § 1710.13(b)(1));

(8) The lease of lots for less than five years provided the lessee is not obligated to renew the lease (see § 1710.13(b)(2));

(9) The sale of lots which are located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots and certain specific requirements are met (see § 1710.12).

(b) Transactions which may be exempted based upon the type of purchaser. There is no requirement to consult or file with HUD; however, an Advisory Opinion may be requested as described in § 1710.16:

(1) The sale of lots to a person who acquires the lots for the purpose of engaging in the construction business (see § 1710.10(i));

(2) The sale of lots to a person who is engaged in the land sales business (see § 1710.13(b)(4));

(3) The sale of lots to the owner of the adjacent lot which has a residential, commercial, or industrial building on it (see § 1710.13(b)(5));

(4) The sale or lease of real estate to any government or government agency (see § 1710.13(b)(8));

(5) The sale of lots which the purchaser has leased for at least one year and on which the purchaser has maintained his or her primary residence for that same period (see § 1710.13(b)(9)).

(c) Transactions which may be exempted because of the number of lots involved. The following are self-determined but an Advisory Opinion may be requested as described in § 1710.16:

(1) The sale or lease of less than 50 lots in scattered sites (see § 1710.13(b)(7));

(2) The sale or lease of 12 or fewer lots during a calendar year provided that this limit has not been exceeded during the preceding five year period (see § 1710.13(b)(6)).

(d) Transactions which may be exempted because of the nature of the offering. These exemptions are self-determined. There is no requirement to consult or file with OILSR; however, an Advisory Opinion may be requested as described in § 1710.16:

(1) The sale or lease of real estate not pursuant to a common promotional plan to offer or sell 50 or more lots (see § 1710.10(a));

(2) The sale or lease of lots pursuant to a court order (see § 1710.10(d));

(3) The sale or lease of lots by a government agency (see § 1710.10(g)).

(e) Transactions which may be exempted because of the nature of the offering. Prior notification to HUD is required.

(1) The sale or lease of lots in a site where promotion is confined to the local community and certain other requirements are met (see § 1710.14).

§ 1710.10 Statutory exemptions—No HUD determination required.

The requirements of the Act shall not apply to:

(a) The sale or lease of real estate not pursuant to a common promotional plan to offer for sale or lease 50 or more lots in a subdivision.

(b) The sale or lease of lots in a subdivision, all of which are 5 acres or more in size.

(c) The sale or lease of any improved land on which there is a residential, commercial, condominium or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of 2 years.

(d) The sale or lease of real estate under or pursuant to court order.

(e) The sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate.

(f) The sale of securities issued by a real estate investment trust.

(g) The sale or lease of real estate by a government or government agency.

(h) The sale or lease of cemetery lots.

(i) The sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business.

(j) The sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development, or which is restricted to such use by a declaration of covenants, conditions and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when:

(1) Local authorities have approved access from such real estate to a public street or highway;

(2) The purchaser or lessee of such real estate is a duly organized corporation, partnership trust or business entity engaged in commercial or industrial business;

(3) The purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(4) The purchaser or lessee of such real estate affirms in writing to the seller that it either (i) is purchasing or leasing such real estate substantially for its own use or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirement of subparagraph (2), is engaged in commercial or industrial business, and is not affiliated with the seller or agent; and,

(5) A policy of title insurance or title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by the purchaser or lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

§ 1710.11. Statutory exemption: Secretary must determine eligibility: Procedures for obtaining determination.

(a) *General.* An offering is exempt from the provisions of the Act if it meets all the Eligibility Requirements listed below in paragraph (b) of this section.

(b) *Eligibility Requirements.* (1) The developer must file a Claim of Exemption with the Secretary. The required format and instructions for preparation are found in paragraph (c)(1) of this section. You must obtain the Secretary's approval which is not retroactive.

(2) The developer must file a Statement of Reservations, Restrictions, Taxes and Assessments with the Secretary. The required format and instructions for preparation are found in paragraph (c)(2) of this section.

(3) The Property must be free of all liens, encumbrances and adverse claims at the time the purchaser signs the contract of sale or lease and continue to be free of liens, encumbrances and adverse claims until a deed is delivered

to the purchaser. Liens, encumbrances and adverse claims permissible under this exemption are:

(i) Reservations which developers commonly give to local bodies or public utilities for bringing public services to the land being developed.

(ii) Taxes and assessments imposed by a State, by any other public body having authority to assess and tax property or by a property owners association which are liens on the property before they are due and payable.

(iii) Beneficial property restrictions enforceable by other lot owners.

(iv) United States land patents or Federal grants and reservations similar to United States land patents.

(4) If there is a blanket encumbrance with release provisions, the real estate may nevertheless qualify for this exemption if both of the following conditions are met:

(A) The contract of sale requires delivery of a deed meeting the requirements of § 1710.11(b)(3) to the purchaser within 120 days following the signing of the sales contract; and

(B) Any earnest money deposit, or other payment on account of the purchase price made by the purchaser prior to the effective date of the conveyance is placed in an escrow account fully protecting the interest of the purchaser. Such account will be with an institution or organization which has trust powers or in an established bank, title insurance or abstract company, or an escrow company which is doing business in the jurisdiction in which the property is located.

(5) Each purchaser or spouse must make a personal on-the-lot inspection of the lot(s) before signing the contract to purchase or lease that lot(s). In addition, the developer or salesperson must sign a written affirmation that the foregoing inspection was made for each sale or lease. The required format and instructions for preparing the developer's affirmation are found in paragraph (c)(3) of this section.

(6) Prior to signing the contract for sale or lease, the salesperson must furnish to the purchaser or lessee a copy of the Secretary approved Statement of Reservations, Restrictions, Taxes and Assessments. In addition, the salesperson must obtain a receipt from the purchaser or lessee acknowledging that the Statement was furnished as required. The required format and instructions for preparing this receipt are found in paragraph (c)(4) of this section.

(c) *Formats and Filing Instructions.* (1) The Claim of Exemption must be in the following format:

Claim of Exemption

I hereby affirm on this ——— day of ——— 19——, that:

A. I am the developer, or the duly authorized agent of the developer, of the subdivision known as ————, located at ————, in the County of ————, State of ————.

B. I will comply with all of the filing and reporting requirements set forth in 24 CFR 1710.11;

C. Each sale made pursuant to this exemption will comply fully with the terms set forth in 24 CFR 1710.11; and

D. The Statements made in support of this Claim of Exemption are true and complete.

(Signature)

(Title)

(If the affirmation is made by an agent of the developer of the subdivision, submit written authorization to act as agent.)

(2) the Statement of Reservations, Restrictions, Taxes and Assessments must be in the following format and completed according to the following instructions:

Statement of Reservations, Restrictions, Taxes and Assessments

Developer IRS Number:

Owner IRS Number:

Name of developer:

Address (include street address if different than mailing address).

Owner (if developer is other than owner).

Address (include street address if different than mailing address).

Name of Subdivision:

Location:

Number of lots in subdivision:

Number of lots in this offering:

Number of acres in subdivision:

Number of acres in this offering:

Reservations and Restrictions

Instructions for completing information about reservations and restrictions. Either attach a list of the reservations and restrictions (stating that it is intended to comply with this subsection), *or* give a complete description of all reservations and restrictions that affect the property covered by this Claim of Exemption.

When reservations or restrictions do not affect all of the lots in the offering, identify those lots that are affected.

Explain who has the authority to enforce the reservations and restrictions.

Identify where the reservations and restrictions are recorded or filed.

Include book and page numbers.

Taxes

Instructions for completing information about taxes. Provide a complete description and listing of taxes and liens as they apply to the real estate subject to the Claim of Exemption. Include only the following which apply to this offering:

(1) Taxes and liens which are presently due and payable (if any);

(2) Taxes which constitute liens on the real estate before they become due and payable, including the date they will become due and payable;

(3) When tax rates or amounts are not yet available for the current taxing period, show the current rate or amount which is available. Include a statement explaining that the taxes shown are not current and that current tax or amounts may be different;

(4) If the real estate has been rezoned, subdivided or resubdivided since the last tax period, show an estimate for the current tax period. Include a statement explaining the estimate.

Assessments

Instructions for completing information about assessments. Provide a complete description of all assessments, fees and dues which have been levied or may be levied in connection with the real estate subject to this Claim of Exemption. List the assessments, fees, and dues showing the rate and amount.

Include an explanation of the authority for imposing the listed assessments, fees and dues.

Warning

Instructions for printing required warning. Print the following warning, enclosed in a box as indicated below.

THE OFFERING IN WHICH YOU ARE PURCHASING ONE OR MORE LOTS HAS QUALIFIED FOR EXEMPTION FROM THE INTERSTATE LAND SALES FULL DISCLOSURE ACT. THEREFORE, YOU WILL NOT HAVE THE BENEFIT OF ANY REMEDIES UNDER THE ACT.

NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS REAL ESTATE.

(3) The salesperson's affirmation that all presale/lease requirements have been met (i.e., that each purchaser or lessee has made an on-the-lot inspection and was furnished the approved Statement before signing a contract) must be in the following format:

Affirmation

I hereby affirm on this ——— day of ———, 19——, that I am the developer, or the developer's authorized agent, of the subdivision known as ——————— located at ——————— in the County of ——————— State of ———————. I further affirm that on ———————, 19——, Mr. and/or Mrs. or Ms. ——————— of ——————— purchase/leased a lot ——— in Section ——— of the above stated subdivision and that all presale/lease requirements of 24 CFR 1710.11 were met.

(Name)

(Title)

Note.—If this affirmation is made by an agent, submit the written authorization to act as agent. Only one authorization per agent need be submitted for each calendar year report.)

(4) the receipt from purchasers or lessees which acknowledges that they have received the Statement of Reservations, Restrictions, Taxes and Assessments before signing a contract, must be in the following format:

Receipt

I hereby acknowledge that I have received a Statement of Reservations, Restrictions, Taxes and Assessements for (idenfity the subdivision and its location) from (name of developer). I have made a personal on-the-lot inspection of (identify the lot) which is the lot I plan to buy or lease.

(Date)

(Signature of Purchaser or Lessee)

(d) *Supporting Documentation.* The developer must submit the following documentation to support the information in the Statement of Reservations, Restrictions, Taxes and Assessments:

(1) Submit a plat of the subdivision offering. Each unsold lot which is the subject of the Claim of Exemption must be clearly identified on the plat.

(2) Submit evidence of title. This evidence of title may be a title insurance policy or an attorney's opinion provided that the attorney is experienced in the examination of titles and is a member of the bar in the State in which the property is located. The evidence of title must be dated within 20 business days of its submission and must identify (or list) all easements, encumbrances, covenants, conditions, reservations, limitations and restrictions.

(3) Submit a copy of the contract of sale or lease to be used. If there is a blanket encumbrance and § 1710.11(b)(4) has been relied upon for exemption eligibility, the contract of sale must specifically state that a deed free of liens, encumbrances and adverse claims will be provided to the purchaser within 120 days of signing the contract.

(e) *Reporting Requirements.* (1) By January 31 of each year, the developer must report to the Secretary any sale or lease made during the preceding calendar year. The report must include:

(i) One representative copy of the Statement of Reservations, Restrictions, Taxes and Assessments along with an affidavit affirming that the Statement submitted is a true copy of that given to each purchaser or lessee.

(ii) One copy of each purchaser's or lessee's receipt acknowledging that the Statement of Reservations, Restrictions, Taxes and Assessments was delivered (see paragraph (c)(4) of this section).

(iii) For each sale or lease, a copy of the salesperson's affirmation that a personal on-the-lot inspection was made prior to signing a contract of sale or lease (see paragraph (c)(3) of this section).

(iv) One representative copy of the contract of sale or lease along with an affidavit affirming that the contract submitted is a true copy of that used for each sale or lease.

(2) When no sales or leases are made during a calendar year, the developer must so notify the Secretary before the January 31 reporting deadline.

(3) All documents required to be submitted with the normal report are to be bound and identified by the subdivision name and the corresponding OILSR identification number. At any time during a year, the Secretary may require that all or part of the documents described above be submitted for sales or leases during that calendar year to date. Upon receipt of such a request, the developer is required to submit the documentation without delay.

(f) *How to Retain Eligibility.*

(1) Eligibility for this exemption provision can be retained for as long as the developer operates the subdivision offering within the provisions of this Section or until all the lots subject to the Claim of Exemption are sold.

Reacquired lots which previously qualified for this exemption may again be sold without further HUD approval provided that the reacquired lots are free of any liens, encumbrances or adverse claims as defined in § 1710.11(b)(3) and the developer complies with all other eligibility requirements of the exemption. The developer must, however, retain evidence of compliance to be made available for review upon demand of the Secretary.

(2) Violations of the provisions of this Section may result in the termination of the Secretary's approval and sales or leases made on and subsequent to the date of the violation may be voidable.

§ 1710.12 Statutory exemption: No HUD determination required.

(a) *General.* The sale or lease of lots are exempt from the registration provisions of the Act (15 U.S.C. 1704 through 1707) if the lots meet the eligibility criteria stated under paragraph (b) of this section and the lots are located in a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries.

(b) *Eligibility Requirements.* (1) The subdivision meets all local codes and standards and is either zoned for single family residences or , in the absence of a zoning ordinance, is limited exclusively to single family residences;

(2) The lot is situated on a paved, public street or highway which has been built to a standard acceptable to the unit of local government in which the subdivision is located or a bond or other surety acceptable to the municipality or county in the full amount of the cost of the improvements has been posted to assure completion to such standards and the unit of local government has accepted or is obligated to accept the responsibility of maintaining the public street or highway;

(3) At the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the lot or the unit of local government is obligated to install such facilities within 180 days. For subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round

and that the lot is approved for the installation of a septic tank;

(4) The contract of sale requires delivery of a warranty deed to the purchaser within 180 days after the signing of the sales contract;

(5) A policy of title insurance is issued in connection with the transaction showing that, at the time of closing, title to the lot purchased or leased is vested in the seller or lessor subject only to such exceptions as may be approved in writing by the purchaser or lessee prior to recordation of the deed or execution of the lease;

(6) Each and every purchaser or spouse has made a personal, on-the-lot inspection of the lot purchased or leased, prior to the signing of a contract to purchase or lease; and

(7) There are no direct mail or telephone solicitations or offers of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot.

§ 1710.13 Regulatory exemptions—No HUD determination required.

(a) *General.* The Secretary has established several regulatory exemptions from the registration and disclosure requirements of the Act (i.e., filing a Statement of Record and furnishing a Property Report). These exemptions are self-determined. HUD's prior determination is not needed.

(b) *Denial.* If the Secretary has reasonable grounds to believe that exemption in a particular case is not in the public interest, the Secretary may then deny further eligibility of the sale or lease for exemption, but only after notice and an opportunity for a hearing requested within 15 days after receipt of notice. The notice need not be based on conditions or requirements for exemption but may be issued upon a finding that conduct of the developer or agent or information about the real estate should be disclosed to purchasers. Proceedings will generally be governed by § 1720.105, et seq. and be patterned after the notice and time requirements of a proceeding authorized by § 1710.45(b)(1).

(c) *Conditions for Self-Determined Exemption.* If a sale meets any one of the following requirements, it qualifies as exempt under this Section.

(1) The sale or lease of lots, each of which will be sold or leased for less than $100, including closing costs, provided that the purchaser or lessee will not be required to purchase or lease more than one lot.

(2) The lease of lots for a term not to exceed five years provided the terms of the lease do not obligate the lessee to renew.

(3) The sale or lease of lots in a subdivision provided that the number of sales or leases will be fewer than fifty lots and not more than twenty-five percent of the subdivision's total lots platted of record. In addition, all other lot sales or leases in the subdivision must be statutorily exempt for one or more of the following reasons:

(i) The lots have a residential, commercial or industrial building upon them;

(ii) The developer will be contractually obligated to construct a residential, commercial or industrial building on the lot within two years following signing of the contract; or

(iii) The lots will be sold or leased to persons who acquire the lots for the purpose of engaging in the business of constructing residential, commercial or industrial buildings.

(4) The sale or lease of lots to a person who is engaged in a bona fide land sales business.

(5) The sale or lease of a lot to a purchaser who owns the contiguous lot which has a residential, commercial or industrial building on it.

(6) The sale or lease of lots in a subdivision where the developer, within the past five calendar years, has not and, in the future, will not make more than twelve sales or leases during any calendar year. In addition, each purchaser must make an on-the-lot inspection of the real estate which is being purchased or leased.

(7) The sale or lease of lots in a site which is part of a subdivision provided the site has fewer than 50 lots, and, each purchaser or spouse makes a personal on-the-lot inspection of the lot(s) before signing the contract to purchase or lease that lot(s).

A site is a group of contiguous lots or lots designated or known by the same or similar name, whether such lots are actually divided or merely proposed to be divided. For the purpose of defining site, lots will be considered contiguous even though contiguity is interrupted by a road, a park, a small body of water, recreational facility or similar manner.

(8) The sale or lease of real estate to a government or government agency.

(9) The sale of a lot or lots which the purchaser has leased for at least one year and on which the purchaser has maintained his or her primary residence for that same period.

§ 1710.14 Regulatory exemption—Local offering—Notice required.

(a) *General.* This Section describes an exemption from the registration and disclosure requirements of the Act (i.e., filing a Statement of Record and furnishing a Property Report). The exemption is available for those small sites which meet the eligibility requirements and are promoted for sale or lease to persons who reside in the same geographical area as the site. In addition, the developer who intends to rely upon this exemption must provide notice to the Secretary that the site will be operated in total compliance with all eligibility requirements. The form of the notice to be submitted prior to the commencement of sales or leases is shown in § 1710.14(e).

"Site" means a group of contiguous lots or a group of lots designated or known by the same or similar name, whether such lots are actually divided or proposed to be divided. For the purpose of this definition, lots will be considered contiguous even though contiguity is incidentally interrupted by a road, a small body of water, recreational type facility or in any similar manner.

(b) *Denial.* If the Secretary has reasonable grounds to believe that exemption in a particular case is not in the public interest, the Secretary may then deny further eligibility of a site for exemption, but only after notice and an opportunity for a hearing requested within 15 days after receipt of notice. The notice need not be based on conditions or requirements for exemption but may be issued upon a finding that conduct of the developer or agent or information about the real estate should be disclosed to purchasers. Proceedings will generally be governed by § 1720.105, et seq. and be patterned after the notice and time requirements of a proceeding authorized by § 1710.45(b)(1).

(c) *Eligibility Requirements.* The site must meet all of the following requirements:

(1) Since the effective date of the Act, the site has contained fewer than 200 lots.

(2) Since the effective date of this regulation, the promotion (advertising, marketing program, etc.) must be directed to permanent residents of the local community in which the subdivision or site is located. Therefore, promotion of the site must meet the following criteria:

(i) Newspapers and periodicals in which the site is promoted must be published in the county in which the site is located or must be published in the nearest adjacent county;

(ii) Any billboards and signs promoting the site must be located within 15 miles of the site;

(iii) Distribution of handbills, brochures, pamphlets and other printed advertising or promotional material must be limited to the subdivision or offices of real estate brokers offering lots in the particular site;

(iv) Any listing real estate broker must have an office in the county in which the subdivision is located or have an office in an adjacent county;

(3) Since the effective date of this regulation, the marketing program for the site cannot include the use of radio or television advertisement, any direct mail or telephone solicitation, offers of gifts, trips, dinners or other such promotional techniques to induce prospective purchasers or lessees to visit the site or to purchase or lease a lot.

(4) Each purchaser or spouse must make a personal on-the-lot inspection of the real estate to be purchased or leased before signing the sale or lease agreement.

(5) Each purchase or lease agreement must contain:

(i) A clear and specific statement describing the party responsible for providing and maintaining the roads, water facilities, sewer facilities and recreational amenities; and,

(ii) An unconditional and non-waivable provision of 3 business days following the consummation of the transaction during which the purchaser or lessee has the right to cancel the agreement and receive a refund of all consideration paid.

(6) In addition to paragraph (c)(5) of this section, each purchase agreement must also provide for delivery of a deed which is free of blanket encumbrances.

(7) The exemption does not extend to any lot located in a flood plain or a flood prone area as designated by a Federal, State or local agency unless the community is participating in the Federal Flood Insurance Program.

(d) The developer is responsible for maintaining records to establish that all eligibility requirements of this exemption have been met. The Secretary may, upon demand, require production of such records. There is no prescribed form for this documentation but the developer must ensure that adequate evidence of eligibility can be presented should the need arise.

(e) *Notice to the Secretary.* If the developer determines that the site meets and will continue to meet all of the eligibility requirements of § 1710.14 and the developer wishes to conduct the sales program in full compliance with those requirements, notice of the intent to operate under this exemption must be provided to the Secretary before this exemption is effective. The date of postmark will be considered the effective date of notice. The form of the notice to be submitted follows:

Notice of Exemption Under Section 1710.14 Rules and Regulations Issued Pursuant to the Interstate Land Sales Full Disclosure Act.

Name of site claimed to be exempt:

Location (include County and State):

Name of developer:

Address of developer:

Name of Agent:

Number of lots in site:

Number of acres in site:

I hereby affirm that I am the developer of the above identified site or that I will be the developer at the time lots are offered for sale or lease to the public or that I am the agent authorized by the developer to complete this statement.[1]

I further affirm that in the offering and sale of lots in the above-stated site I meet all of the eligibility requirements as set forth in § 1710.14 of the Interstate Land Sales Rules and Regulations (24 CFR 1710.14) and will continue to operate in compliance with these requirements.

I understand that the Secretary may require documentation evidencing that compliance with § 1710.14 of the Rules and Regulations has been maintained in all sales and sales promotion and that I must produce such documentation upon demand of the Secretary.

I further understand that the Secretary may, after notice and opportunity for hearing, declare the above-identified subdivision or site ineligible for this exemption should evidence be presented that exemption from full disclosure is not in the public interest.

Date:

Signature:

(Corporate seal if applicable)

Title:

§ 1710.16 Advisory opinion: Secretary's determination may be requested.

(a) *General.* When it is not clear that an offering is qualified under the self-determined statutory provisions of § 1710.10, or § 1710.12 or under the self-determination regulatory provisions of § 1710.13 and 1710.14 or whether jurisdiction exists, the developer may request an Advisory Opinion to clarify the situation. This Section describes the filing requirements for requesting an Advisory Opinion.

(b) *Documentation.* All requests must contain the following documentation:

(1) A $250.00 filing fee in the form of a certified check, cashier's check or postal money order made payable to the Treasurer of the United States. This fee is not refundable.

(2) A comprehensive statement fully describing the conditions and operation of the subdivision or site referring to the exemption on which the opinion is requested. Upon receipt of the request, additional clarifying information may be requested from the developer. The OILSR Exemption Guidelines contain formats and examples of material which is required to fully evaluate an Advisory Opinion request.

(3) A developer's Affirmation exactly as shown below:

Developer's Affirmation

Name of subdivision or site:

Location (include County and State):

Name of developer:

Address of developer:

Name of Agent:

Address of Agent:

Number of lots in subdivision or site:

Number of acres in subdivision or site:

I hereby affirm that I am the developer or owner of the property herein described or will be the developer at the time the lots are offered for sale or lease to the public, or that I am the agent authorized by the developer to complete this statement.

I further affirm that the statements contained in all documents submitted with the Request for Advisory Opinion are true and complete.

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (83 Stat. 598 U.S.C. 1717) provides:

"Any person who willfully violates any of the provisions of this title or the rules and regulations prescribed pursuant thereto * * *, shall upon conviction be fined $5,000 or imprisoned not more than five years, or both," (Sec. 1419, 82 Stat. 598, 15 U.S.C. 1718, Secretary's delegation published 36 FR 5006)

§ 1710.18 No action letter: Secretary's determination requested.

There are instances when one or more sales or leases will fall within the provision of the Act but do not qualify for an exemption. Nevertheless, the circumstances of the sales or leases may be such that no affirmative action is needed to protect the public interest or prospective purchasers. If a request for a No-Action Letter is submitted and the facts presented demonstrate that no affirmative action is needed to protect the public interest or prospective

[1] If an agent is executing this Notice, submit written authorization to act as the agent.

purchasers in particular transactions, a letter will be issued stating that no action will be taken under the Act with regard to these transactions. The issuance of a No-Action Letter will not affect any right which any purchaser may have under the Act and it will not preclude any future agency action which may become necessary. A request for a NO ACTION LETTER must include a thorough explanation of the proposed transactions.

§ 1710.20 Requirements for registering a subdivision—Statement of record—Filing and form.

(a) *Filing.* In order to register a subdivision and receive an effective date, the developer or owner of the subdivision must file a Statement of Record with the Secretary. The official address to be used is:

Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

A fee, in the amount and the form set out in § 1710.35, must accompany the Statement of Record.

(b) *Form.* The Statement of Record shall be in the format specified in § 1710.100 and shall be completed in accordance with the instructions in §§ 1710.102, 1710.105–118, 1710.200, 1710.208–216 and 1710.219. It shall be supported by the documents required by §§ 1710.208–216 and 1710.219. It shall include any other information or documents which the Secretary may require as being necessary or appropriate for the protection of purchasers.

(c) *State Filings.* A Statement of Record for a subdivision located in one of the States appropriatedly identified in § 1710.54 may be in the form required by State authorities if filed in accordance with the requirements in §§ 1710.52, 1710.56,1710.58 and 1710.59.

§ 1710.21 Effective dates.

(a) *General.* The effective date of an initial or consolidated Statement of Record or any amendment thereto shall be the 30th day after the date of filing unless the Secretary notifies the developer in writing prior to such 30th day that:

(1) The effective date has been suspended in accordance with § 1710.45(a) or,

(2) An earlier effective date has been determined.

(b) *Amendments prior to an effective date.* If a Statement of Record or any amendment is amended prior to its becoming effective, the effective date shall be the 30th day after the filing of the latest amendatory material unless the Secretary notifies the developer in writing prior to such 30th day that:

(1) The effective date has been suspeneded in accordance with § 1710.45(a) or,

(2) An earlier effective date has been determined.

(c) *Suspension of effective date by developer.* (1) A developer, or owner, may request that the effective date of its Statement of Record be suspended, provided there are no administrative proceedings pending against either of them at the time the request is submitted. The request must include any consolidations or amendments which have been made to the initial Statement of Record. Forms for this purpose will be furnished by the Secretary upon request.

(2) Upon acceptance by the Secretary, the effectiveness of the Statement of Record shall be suspended as of the date the request was executed by the developer or owner.

(3) The suspension shall continue until the developer, or owner, submits all amendments necessary to bring the registration into full compliance with the Regulations which are in effect on the date of the amendments and the Secretary allows those amendments to become effective.

§ 1710.22 Statement of record.

(a) *Initial Statement of Record.* (1) Except in the case of exempt transactions, an initial Statement of Record shall be filed, and an effective date issued, prior to selling or leasing any lot in a subdivision.

(2) If a developer buys from another developer 50 or more lots from an existing registration, the new developer, or owner, may have to submit a new initial Statement of Record and receive an effective date covering the acquired lots prior to selling or leasing any of those lots.

(3) Changes in principals due to a sale of stock in a corporation or changes in partners or joint venturers which are accomplished in accordance with the partnership or joint venture agreement but which do not cause a change in the title to the land in the subdivision may be submitted as an amendment.

(4) Any initial Statement of Record must be accompanied by a fee, as specified in § 1710.35(b), based upon the number of lots sought to be registered.

(b) *Consolidated Statement of Record.* (1) If the developer intends to sell or lease additional lots as part of the same common promotional plan with lots already registered, a consolidated Statement of Record may be submitted for the additional lots. A fee, as specified in § 1710.35(b) and based on the number of additional lots, must accompany the submission. The additional lots may not be sold or leased until a new effective date is issued.

(2) If the additional lots are simply the result of a replatting of lots previously registered and enumerated in the Property Report and do not include any additional land, the change may be made by an amendment. However, the amendment must be accompanied by a fee, as specified in § 1710.35(b), based on the number of additional lots.

(c) *Consolidated Statement of Record—Form.* A consolidated Statement of Record shall contain:

(1) Those pages of the Property Report portion and Additional Information and Documention portion which contain changes which have occurred since the last effective submission, and;

(2) A recapitulation or listing of each of the section headings, and subheadings if necessary, of the Additional Information and Documentation portion. Each item of the listing shall contain a statement as to whether or not any change is made in the section; whether any new or additional information if being submitted and, if documentation is incorporated by cross reference, the previous submission in which that documentation may be found, and;

(3) Documentation to support the additional lots (e.g., plat maps, topographic maps and general plan to reflect new lots, title information, permits for additional facilities, financial assurances of completion of additional facilities, financial statements) or updated or expanded documents in support of previous submissions, and;

(4) The affirmation required by § 1710.219.

Pages having no changes and documents in previous submissions which apply equally to the additional lots may be incorporated by reference. However, the developer may, at its option, submit the entire format for an initial filing, including copies of previously submitted documents, to expedite the examination process.

(d) *Consolidated Statement of Record amends prior Statement of Record.*

A Consolidated Statement of Record shall contain all applicable information for all registered lots in the subdivision except those deleted pursuant to other provisions in these regulations. The resulting Property Report shall be used for all sales in the subdivision, except for those transactions which are exempt from the provisions of the Act or which have been granted an exempt status by the Secretary, unless the Secretary has

specifically authorized the use of multiple Property Reports.

(e) *Initial Statement of Record—when prior approval to submit is required.* In those subdivisions where there is a disparity between the lots already registered and those sought to be registered because of location, terrain, proposed use of the lots or the amenities to be furnished or available, the developer may present a resume of the differences and request the Secretary's permission to file a separate initial Statement of Record for the additional lots. Upon consideration of the facts submitted, the Secretary may allow such a procedure.

(f) *Lots which have been deleted from registration.* Should the developer, for any reason, delete by amendment any registered lots from an effective Statement of Record, those lots must be reregistered by a consolidation and a new effective date issued, before they can be sold or leased. An appropriate fee must accompany the submission.

(g) *Lots sold to individual purchasers.* It is not necessary to delete form the registration those lots which have been sold to individual purchasers for their own use.

§ 1710.23 Amendment—filing and form.

(a) *Filing.* If any change occurs in any representation of material fact required to be stated in an effective Statement of Record, an amendment shall be filed. The amendment shall be filed within 15 days of the date on which the developer knows, or should have known, that there has been a change in material fact.

(b) *Form.* An amendment shall incorporate by reference the prior Statement of Record except for any changes in material fact. A change in material fact shall be specifically described and supported by the same documentation which would be required for an initial submission. Any amendment shall be accompanied by:

(1) A letter from the developer giving a clear and concise description of the purpose and significance of the amendment and referring to the Section and page of the Statement of Record which is being amended, and;

(2) All pages of the Statement of Record, which have been amended, retyped in the required format to reflect the changes. The OILSR number of the Statement of Record shall appear at the top of each page of the material submitted.

§1710.29 Use of property report—Misstatements, omissions or representation of HUD approval prohibited.

Nothing is these regulations shall be construed to authorize or approve the use of a Property Report containing any untrue statement of a material fact or omitting to state a material fact required to be stated therein. Nor shall anything in these regulations be construed to authorize or permit any representation that the Property Report is prepared or approved by the Secretary, OILSR or the Department of Housing and Urban Development.

§ 1710.35 Payment of fees.

(a) *Method of payment.* Fees must be paid by certified check, by cashier's check or by postal money order made payable to the Treasurer of the United States.

(b) *Fees of registration.* The fee for each initial and consolidated registration is set forth in the following schedule:

Number of lots	Fees
1–50	$300
51–100	$370
101–150	$440
151–200	$510
201–250	$580
251–300	$650
301–350	$720
351–400	$790
401–450	$860
451–500	$930
501 and over	$1,000

(c) *Fee for advisory opinion.* The filing fee for an Advisory Opinion (§ 1710.16) is $250. This fee is not refundable.

(d) *Fee for amendments.* A fee of $100 is charged for the filing of the second and any subsequent pre-effective amendments to an initial or consolidated filing. No fee is charged for the first pre-effective amendment or for any post-effective amendment.

§ 1710.45 Suspensions.

(a) Suspension Notice—prior to effective date.

(1) If it appears to the Secretary that a Statement of Record or an amendment is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer, by issuing a suspension notice, within a reasonable time after the filing of such materials but prior to the time the materials would otherwise be effective.

(2) A suspension notice issued pursuant to this subsection shall suspend the effective date of the Statement of Record or the amendment. It shall continue in effect until 30 days, or such earlier date as the Secretary may determine, after the necessary amendments are submitted which correct all deficiencies cited in the notice.

(3) Upon receipt of a suspension notice, the developer has 15 days in which to request a hearing. If a hearing is requested, it shall be held within 20 days of the receipt of the request by the Secretary.

(b) Suspension orders—subsequent to effective date.

(1) A notice of proceedings to suspend an effective Statement of Record may be issued to a developer if the Secretary has reasonable grounds to believe that an effective Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Act or rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading. The Secretary may, after notice, and after opportunity for a hearing requested pursuant to § 1720.220 within 15 days of receipt of such notice, issue an order suspending the Statement of Record. In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the Statement of Record or otherwise complied with the requirements of the order. When the developer has complied with the requirements of the order, the Secretary shall so declare and thereupon the suspension order shall cease to be effective.

(2) If the Secretary undertakes an examination of a developer or its records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Secretary or obstructs, or refuses to permit the Secretary to make such examination, the Secretary may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Secretary shall so declare and thereupon the suspension order shall cease to be effective. In accordance with the procedure described in § 1720.235, a hearing may be requested.

(3) Upon receipt of an amendment to an effective Statement of Record, the Secretary may issue an order suspending the Statement of Record until the amendment becomes effective if the Secretary has reasonable grounds to believe that such action is necessary or appropriate in the public interest or for the protection of purchasers. In accordance with the procedure described in § 1720.235, a hearing may be requested.

(4) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or its registered agent or is delivered by certified or registered mail to the address of the developer or its authorized agent.

§ 1710.52 State filings—In general.

(a) Material filed with and found acceptable by State authorities charged with the responsibility of regulating the sale of lots in subdivisions may be accepted by the Secretary as a Statement of Record required by this part if the Secretary determines such action to be appropriate and such determination is set forth in § 1710.54. Statements of Record submitted under this Section shall be in the format and contain the information and documents required by §§ 1710.52, 1710.56, 1710.58 and 1710.59. Material filed with the Secretary under this section must be accompanied by a statement from the appropriate State authorities which states substantially that:

The (indicate the State Department of Real Estate or other appropriate entity) has reviewed the attached materials and finds they are true copies of (1) the (indicate Property Report or other similar state accepted document or amendment to such document) for (indicate the name of the subdivision), made effective by the State of ——— on ——— (give date); and (2) the supporting documentation upon which such (indicate the document or amendment) is based.

(Signature)

(b) Where material has been accepted for filing by the Secretary under paragraph (a) of this section and such material or its duplicate, or any part thereof, for any reason, is no longer acceptable to the State authorities or effective in that state, the filing with the Secretary shall be ineffective. If a subdivision, registered with the Secretary and a state pursuant to §§ 1710.52(a) and 1710.54 becomes inactive, or suspended under the laws of such state, then its registration with the Secretary shall be ineffective from that time.

(c) An effective date or a suspension notice may be issued by the Secretary pursuant to § 1710.21 or § 1710.45 for state accepted materials submitted as Statements of Record.

(d) The Secretary may require such changes, additional information, documents or certification as the Secretary determines to be reasonably necessary or appropriate in the public interest or for the protection of purchasers before issuing a federal effective date.

(e) The disclosure requirements for State Filings shall be substantially equivalent to those for federal Statements of Record in §§ 1710.102, 1710.105–118 and 1710.208–216.

(f) The Secretary may refuse to accept any particular filing under this section when it is determined that acceptance is not in the public interest.

(g) Three copies of the final version of the State Property Report submitted as part of the materials made effective by the Secretary as part of the Statement of Record, shall be submitted in the exact form in which they are to be delivered to lot purchasers. This shall be done within 20 days of the date on which the Statement of Record is initially made effective by the Secretary or within 20 days of the date on which consolidated Statements of Record or amendements affecting the State Property Report are made effective. These copies shall be accompanied by, or have attached, the pages and statements required by § 1710.58. The cover page required by § 1710.58(a) shall have the Federal effective date printed on its face and, except for the inclusion of such date and other specifically permitted variations, the final versions of this state document shall be exactly the same as that made effective by the Secretary as part of the Statement of Record.

§ 1710.54 State filings—Materials which may be filed with the Secretary.

(a) Pursuant to § 1710.52, the Secretary has determined that the following materials, after having been filed with and found acceptable by the authorities in the specified State, may be filed with the Secretary as initial Statements of Record under § 1710.52 and may be amended or consolidated under § 1710.56:

(1) California: Final Subdivision Public Reports and supporting documentation for subdivisions located in California.

(b) Pursuant to § 1710.52, the Secretary has determined that, in addition to the materials described in §1710.54(a), above, the following materials which have been filed with the Secretary in accordance with prior effective regulations may be amended and or consolidated under the provisions of § 1710.56:

(1) Florida: materials which were (i) filed with the State of Florida after August 1, 1967, and (ii) accepted by Florida and filed with the Secretary prior to December 30, 1976.

(2) Hawaii: materials which were (i) filed with the State of Hawaii after enactment of Act 223, Session Laws of Hawaii, 1967; and (ii) accepted by Hawaii and filed with the Secretary prior to January 1, 1975.

(3) New York: materials accepted by the State of New York and filed with the Secretary prior to January 1, 1975.

The requirements of §§ 1710.52, 1710.56, 1710.58, 1710.59 shall apply to all amendments and consolidations which are filed or required to be filed in connection with materials which have been made effective by states and accepted by the Secretary.

§ 1710.56 State filings—Amendments and consolidations.

(a) *Amendments.*—(1) *General Requirements.* State accepted materials, filed with the Secretary pursuant to §§ 1710.52 and 1710.54, shall be amended to reflect any amendment to such materials made effective by the state or any change of a material fact regarding the subdivision. All amendments to such materials, which reflect changes in material facts regarding the subdivision, shall be submitted to the state authorities within 15 days of the date on which the developer knows, or should have known, of such change and to the Secretary within 15 days after it becomes effective under the applicable State laws. However, such amendment shall not be effective until the Secretary has determined that the amendment meets all applicable requirements of these regulations.

(2) Amendments shall include or be accompanied by:

(i) A letter from the developer giving a narrative statement fully explaining the purpose and significance of the amendment and referring to that section and page of the Statement of Record which is being amended, and;

(ii) All amended pages of the state accepted materials filed with the Secretary pursuant to §§ 1710.52 and 1710.54. These pages shall be retyped with their amendments. Each such page shall have its date of preparation in the lower right hand corner, and;

(iii) A signed state acceptance certification substantially the same as that required by § 1710.52, and;

(iv) The appropriate fees as indicated in § 1710.35.

(b) *Consolidations.*—(1) When consolidations allowed.

If lots are to be registered pursuant to §§ 1710.52 and 1710.54 which are in the same common promotional plan with other lots already registered with the Secretary, then new consolidated state accepted materials including such lots

may be filed with the Secretary as a Statement of Record.

(2) Consolidated Statements of Record shall include or be accompanied by:

(i) State accepted consolidation materials which are also acceptable to the Secretary as a *complete* Statement of Record (state property report inclusive) pursuant to §§ 1710.52, 1710.54 and other referenced sections. These state accepted consolidation materials shall cover all lots previously registered in the common promotional plan except those deleted pursuant to other provisions in these regulations. These materials shall also include information and items required in §§ 1710.52, 1710.58, 1710.59 and other referenced sections for state accepted materials filed as an initial registration Statement of Record, except that, supporting documentation in materials previously made effective by the Secretary for other lots in the subject common promotional plan may be incorporated by reference into the new consolidation materials submitted as a Statement of Record. However, such documentation may be incorporated by reference only if it is applicable to the new consolidated lots as well as to the previously registered lots and if it also currently meets all requirements of §§ 1710.52, 1710.58, and 1710.59 for materials submitted as initial Statements of Record.

(ii) A signed state acceptance certification substantially the same as that required by § 1710.52(a); and,

(iii) The appropriate fees as indicated in § 1710.35.

(c) *Effective Date—State Filing.* The effective dates of state materials filed as amendments and consolidated Statements of Record shall be determined in accordance with the provisions of § 1710.21.

§ 1710.58 State filings—property report.

Land sales public disclosure documents which are acceptable to the appropriate states indicated in § 1710.54 and which are submitted as property reports in materials submitted as Statements of Record pursuant to §§ 1710.52 and 1710.54, shall include the below indicated items. Hereinafter, such documents will be referred to as "state property reports".

(a) A cover page shall be included in the state property report by attaching it to the front of the state property report prior to the time it is delivered to lot purchasers, unless an alternative arrangement has been approved by the Secretary.

(1) This cover page shall be prepared in accordance with the Sample State Property Report Cover Page printed herein; except that:

(i) The statement "Read this Property Report before signing anything" must be printed in red ½ inch letters, but only in the final printed version which is deliverd to lot purchasers.

(ii) The size of the cover page may be reduced to that of the other pages in the state document filed with the Secretary as a Property Report.

BILLING CODE 4210-01-M

Sample State Cover Sheet

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This property report is prepared and issued by (insert the name of the developer of this subdivision or the name of the appropriate state agency). It is NOT prepared or issued by the Federal Government.

Federal law requires that you receive this property report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

Under federal law, if you received this property report less than 48 hours prior to signing a contract or agreement, you have until midnight of the third business day following the consumation of the transaction to cancel it by notice to the developer. You may have additional rights under state laws.

NAME OF SUBDIVISION

NAME OF DEVELOPER

DATE OF THIS REPORT

BILLING CODE 4210-01-C

(b) The below warnings, or ones substantially the same, shall be included in the state property report in positions of high visibility. Paragraph (2) may be omitted if all improvements have been completed or if no improvements are proposed.

(1) The future value of land is very uncertain and dependent upon many factors. Do not expect all land to increase in value.

(2) Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed.

(3) Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

(4) Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse, and the degree of the impact, will depend upon the location, size, planning, and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

(5) In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

(c) A receipt, agent certification and cancellation page shall be included in the state property report. This page shall be prepared substantially in accordance with the following directions and accompanying sample "Receipt, Agent Certification and Cancellation Page". The receipt, agent certification and cancellation page shall be prepared in such a way as to incorporate an original and a copy. The original and one copy of this page shall be included in the property report delivered to prospective purchasers. Carbon paper may be inserted between the two so that after the purchaser has signed the receipt and the saleman has signed the certification, the copy can be detached. This copy shall be retained by the developer for a period of three years from the date of execution or for the term of the contract, whichever is greater. Upon demand by the Secretary, the developer shall, without delay, make the copies of these receipts and certifications available for inspection by the Secretary, or the developer shall forward to the Secretary any of these receipts and certifications, or copies thereof, as the Secretary may specify. The Agent Certification must be completed by the developer, or its agent, in the presence of the purchaser, unless the transaction takes place through the mails with no personal contact. In the latter case, the certification should be completed before the property report is delivered to the purchaser. The person signing shall be the person most active in dealing with prospective purchasers.

BILLING CODE 4210-01-M

SAMPLE RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE

Purchaser Receipt

IMPORTANT READ CAREFULLY

Name of Subdivision: Date of Report:

OILSR Number:

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt you acknowledge that you have received a copy of our property report.

Received by. . . . . Date. . .
Street Address . . . . . .
City . . . . . .

If any representations are made to you which are contrary to those in this report please notify the:

Office of Interstate Land Sales Registration
HUD Building 451 Seventh Street, S.W.
Washington, D. C. 20410

Agent Certification

I certify that I have made no representations to the person(s) receiving this property report contrary to the information contained in this property report.

Lot _____ Block _____ Section_____

Name of Salesperson. . . . . .

Signature. . . . . .

Purchaser Cancellation

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.
. . . . . .

Name of Subdivision _____

Date of Contract _____

This will confirm that I/we wish to cancel our purchase contract:

Purchaser(s) signature _____ Date _____

BILLING CODE 4210-01-C

§ 1710.59 State filings—statement of record.

If the developer is filing pursuant to § 1710.52, the materials and information indicated below shall be filed with the Secretary as the Statement of Record required by this part. Such Statement of Record shall be bound, tabbed, and indexed to facilitate examination. An index shall be placed at the beginning, or top, of the material submitted. If any of the information or a document required by this format, except for the heading, is already included in the state materials, the format may be completed by making reference to the identity and location of the information or document in the state materials. It will not be necessary to duplicate the information or document in the format.

Section I. Complete the following heading:

Statement of Record

Name of Subdivision:

_____

Location (state, county):

_____

Name of Developer:

_____

Developer's Address:

_____

Developer's IRS Number:

_____

Developer's Authorized Agent:

_____

Agent's Address:

_____

Subdivision Owner:

_____

After the above heading supply all information, statements and documentation requested below.

(a) *Administrative Information.* State whether the material represents an initial Statement of Record or a consolidated Statement of Record. If it is a consolidated Statement of Record, identify OILSR number assigned to the initial Statement of Record. State whether subsequent Statements of Record will be submitted for additional lots in the subdivision.

(b) *Subdivision Information.* (1) If this is a consolidated Statement of Record, state the number of lots being added, the number of lots in prior Statements of Record and the new total number of lots. The Secretary must be able to reconcile the numbers stated here with the title evidence and the plat maps.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number of acres being added, the number of acres in prior Statements of Record and the new total number or acres. State the total acreage owned in the subdivision, the number of acres under option or similar arrangement for acquisition of title to the land and the total acreage to be offered pursuant to the same common promotional plan.

(3) State whether any lots have been sold or leased in this subdivision since April 28, 1969, and prior to registration with this Office. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the OILSR number assigned to the exemption, if any.

(4) List the States in which registration for land sales has been made for the subdivision and/or developer. Disclose any adverse action taken by any State.

(c) *Developer Information.* (1) State whether the owner of the land, the developer, its parent, subsidiaries, or any of the principals, officers, or directors of any of them are directly or indirectly involved in any other subdivision. If so, identify the subdivision by name, location and OILSR number, if any.

(2) State whether the owner or developer is a subsidiary corporation. If the owner or developer is a subsidiary corporation, or if any of the principals or the owner or developer are corporate entities, name the parent and/or corporate entity and identify the principals of each entity to the ultimate parent entity.

(3) If the owner is other than an individual, name the type of legal entity and list the interest, and extent thereof, of each principal. Identify the officers and directors.

(d) *Documentation.* (1) Submit a copy of the state accepted land sales disclosure document which is submitted as a Property Report and which has been made effective by the appropriate state indicated in § 1710.54.

(2) Submit two copies of a general plan of the subdivision. This general plan shall consist of a map, prepared to scale, and it shall identify the various proposed sections or units within the subdivision; the lot numbers within those sections or units; the existing or proposed roads or streets and the location of the existing or proposed recreational and/or common facilities. In an initial filing, this map shall, at least, reflect the lots and area included in the Statement of Record. In a consolidated Statement of Record it shall reflect the lots and area being added as well as the lots and areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be incorporated by reference. Lot dimensions need not be shown on individual lots but a representative lot, with dimensions, shall be displayed on the map.

Section II. Submit all information required in § 1710.212, Financial Information. Also submit Notice of Activity as an amendment to this section as required by § 1710.310.

Section III. Submit all information required in § 1710.216(b) Price Range, Type of Sales and Marketing Information.

Section IV. Submit all information required by § 1710.116(c), Violations and Litigation.

Section V. Submit all information, documentation, certifications, and affirmations submitted to the state in conjunction with the registration of the subject subdivision. This section shall include or consist of the state Statement of Record or similar document, if such exists. Contracts and agreements must contain the language required by § 1710.209 (f)(3), Title.

Section VI. Affirmation. I hereby affirm that I am the senior executive officer of the developer of the lots herein described or will be the senior executive officer of the developer at the time lots are offered for sale or lease to the public, or that;

I am the agent authorized by such developer to complete the statement (if agent, submit written authorization to act as agent) and;

That the statements contain in this state document filed with the Secretary as a Statement of Record and any supplement thereto, together with any documents submitted herewith, are full, true, complete and correct; and

That I have complied with the land development and disclosure requirements of the State of _____ (State of filing); and

That the material submitted is a true and accurate copy of all the material filed with and accepted by the State of _____ (State of filing); and that the fees accompanying this application are in the amount required by the Rules and Regulations of the Office of Interstate Land Sales Registration.

_____

Date

_____

Signature

_____

(Corporate seal if applicable)

_____

(Title)

Warning: Section 1418 of the Housing and Urban Development Act of 1968 (82 Stat. 598, 15 U.S.C. 1717) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact * * * shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

Subpart B—Reporting Requirements

§ 1710.100 Statement of record—Format.

(a) The Statement of Record consists of two portions; the Property Report portion and the Additional Information and Documentation portion.

(b) General Format. The Statement of Record shall be prepared in accordance with the following format:

Property Report

Heading and *Section Number*

Cover Sheet.....1710.105
Table of Contents.....1710.106
Risks of Buying Land, Warnings.....1710.107
General Information.....1710.108
Title and Land Use.....1710.109
(a) General Instructions
(b) Method of Sale
(c) Encumbrances, Mortages and Liens
(d) Recording the Contract and Deed
(e) Payments
(f) Restrictions
(g) Plats, Zoning, Surveying, Permits, Environment
Roads.....1710.110
Utilities.....1710.111
(a) Water
(b) Sewer
(c) Electricity
(d) Telephone
(e) Fuel or other Energy Source
Financial Information.....1710.112
Local Services.....1710.113
Recreational Facilities.....1710.114
Subdivision Characteristics and Climate.....1710.115
(a) General Topography
(b) Water Coverage
(c) Drainage and Fill
(d) Flood Plain
(e) Flooding and Soil Erosion
(f) Nuisances
(g) Hazards
(h) Climate
(i) Occupancy
Additional Information.....1710.116
(a) Property Owners' Association
(b) Taxes
(c) Violations and Litigation
(d) Resales or Exchange Program
(e) Unusual Situations
1. Leases
2. Foreign Subdivision
3. Time Sharing
4. Membership
(f) Equal Opportunity in Lot Sales
(g) Listing of lots
Cost Sheet.....1710.117
Receipt, Agent Certification and Cancellation Page.....1710.118

Additional Information and Documentation

General Information.....1710.208
Title and Land Use.....1710.209
Roads.....1710.210
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Financial Information.....1710.212
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Subdivision Characteristics.....1710.215
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§ 1710.102 General instructions for completing the statement of record.

(a) *Paper and Type.* The Statement of Record shall be on good quality, unglazed white or pastel paper. Letter size paper, approximately 8 x 11 inches in size, will be used for the Property Report portion and legal size paper, approximately 8½ x 14 inches in size, will be used for the Additional Information and Documentation portion. Side margins shall be no less than 1 inch and no greater than 1½ inches. Top and bottom margins shall be no less than 1 inch. In the preparation of the charts to be included in the Property Report, the developer may vary from the above margin requirements or print the charts lengthwise on the required size paper if such measures are necessary to make the charts readable. The Statement of Record shall be prepared in an easily readable style of elite or pica or similar type of uniform font in blue, black or blueblack ink.

(b) *Numbering and Dating.* Each page of the Statement of Record as submitted to OILSR shall be numbered and shall include the date of typing or preparation in the lower right hand corner, except in the final printed version of the Property Report portion.

(c) *Signing.* The Statement of Record shall be signed by the senior executive officer of the developer or a designated agent.

(d) *Printing.* The Statement of Record and, insofar as practical, all papers and documents filed as a part thereof, shall be printed, lithographed, photocopied, typewritten or prepared by any similar process which, in the opinion of the Secretary, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such materials shall be clear and easily readable.

(e) *Headings, Subheadings, Captions, Introductory Paragraphs, Warnings.* Property Report subject "headings" are those descriptive introductory words which appear immediately after section numbers 1710.106 through 1710.116 (e.g. § 1710.108 has "General Information" and § 1710.111 has "Utilities"). Each such heading shall be printed in the Property Report in underlined capital letters and centered at the top of a new page. Section numbers shall not be printed in the Property Report. Property Report subheadings are those descriptive introductory words which appear in italics in the Regulations at the beginning of paragraphs designated by paragraph letters (a), (b), (c) etc. An example of a subheading is "water" found immediately after the paragraph letter (a) in § 1710.111. These subheadings will be printed in the Property Report only if they are relevant to the subject subdivision. If printed these subheadings shall be capitalized and shall begin at the left hand margin of the page. Property Report "captions" are those descriptive introductory words which appear in italics in the Regulations at the beginning of subparagraphs designated by numbers (1), (2), (3), etc. An example of such captions is "Sales Contract and Delivery of Deed" found immediately after the subparagraph number "(1)" in § 1710.109 (b). These captions are to be printed in the Property Report only if they are applicable to the subject subdivision. If printed, these captions shall be centered on the page from the side margins, and shall have only the first letter of each word capitalized. Headings and subheadings will be used in the Property Report in accordance with the sample page appearing in § 1710.102. Introductory paragraphs will follow headings if they are applicable and necessary for a readable entry into the subject matters, but note, the introductory paragraphs for "Title to the Property and Land Use" are to be used in every case as provided in § 1710.109(a)(1). Subheadings and captions which do not apply to the subdivision should be omitted from the Property Report portion and answered "not applicable" in the Additional Information and Documentation portion, unless specifically required to be included elsewhere in these instructions. Warnings shall be printed substantially as they appear in the instructions in §§ 1710.105–118. They shall be printed in capital letters and enclosed in a box as shown on the sample page in § 1710.102. The paragraphs in the Property Report portion need not be numbered.

BILLING CODE 4210-01-M

Sample Page

ROADS

Here we discuss the roads that lead to the subdivision, those within the subdivision and the location of nearby communities.

ACCESS TO THE SUBDIVISION.

County road #43 leads to the subdivision. It has two lanes and the width of the wearing surface is 22 feet. It's paved with a macadam surface.

This road is maintained by Bottineau County with County funds. No improvements are planned at this time.

ACCESS WITHIN THE SUBDIVISION.

The roads within the subdivision will be located on rights of way dedicated to the public.

We are responsible for constructing the interior roads. There will be no additional cost to you for this construction.

WE HAVE NOT SET ASIDE ANY FUNDS IN AN ESCROW OR TRUST ACCOUNT OR MADE ANY OTHER FINANCIAL ARRANGEMENTS TO ASSURE COMPLETION OF THE ROADS, SO THERE IS NO ASSURANCE WE WILL BE ABLE TO COMPLETE THE ROADS.

At present, the roads are under construction and do not provide access to the lots in Units 2 and 3 during wet weather. The succeeding chart describes their present condition and estimated completion dates.

Unit	Estimated Starting Date (month & Year)	Percentage of Construction now Complete	Estimated Completion date (month & year)	Present Surface	Final Surface
1	2/79	50	12/79	gravel	asphalt
2	8/79	0	6/80	dirt	asphalt
3	4/80	0	10/80	none	asphalt

BILLING CODE 4210-01-C

(f) *Language Style.* All information given in the Property Report portion shall be stated in narrative form using plain, concise, everyday language which can be readily understood by purchasers who are unfamiliar with real estate transactions. Excessively long paragraphs should be avoided. Keep them as brief as possible. Use separate paragraphs for different points discussed. Disclose all pertinent facts. Potential consequences to a purchaser must be made clear even though not specifically asked for in the format and the instructions. In the Property Report the pronouns "you" and "your" shall generally be used in referring to the prospective purchaser and the pronouns "we", "us", and "our" shall generally be used in referring to the developer. The Secretary specifically reserves the right to require modification of the text when the narrative does not meet the standards of this section.

(g) *Format of the Additional Information and Documentation Portion of the Statement of Record.* The supporting information and documentation required by these regulations shall be identified by affixing a tab on the right side of the cover sheet of the required information or documentation and by identifying on the tab the section number of the Statement of Record instructions to which the information or documentation corresponds. This information or documentation shall then be placed immediately after the page(s) on which the Section number and answers for that Section appear. If the data in a document is applicable to more than one section of instructions, the developer may substitute as a document in the second case a statement incorporating the earlier document by reference. Deeds, title policies, subdivision plats or maps and other documentary information required to be contained in the Additional Information and Documentation portion of the Statement of Record need not be on the same size paper as the Statement of Record but, if larger, shall be folded to a size no larger than 8½ × 14 inches. Supporting documents shall be inserted into the binding in such a manner as to permit them to be examined without the necessity of removing them from the binding. This may be accomplished by proper folding or through the use of envelopes.

(h) *Binding.* The Statement of Record shall be bound with the Property Report portion on top, including any documents which may be required to be attached when delivered to the purchaser, followed by the Additional Information and Documentation portion.

(i) *Advertising and Promotional Material.* No advertising, or promotional material or statements which are self-serving on behalf of the developer or owner may be included in the Statement of Record or resulting Property Report.

(j) *Additional Information.* (1) In addition to the information expressly required to be stated in the Statement of Record, there shall be added, and the Secretary may require, such further material information, documentation and certification as may be necessary in the public interest and for the protection of purchasers or necessary in order to make the statements not misleading in the light of circumstances under which they are made.

(2) The instructions are not all inclusive. The developer shall include any other facts which would have a bearing upon the use by the purchaser of any of the facilities, services or amenities; which would cause or result in additional expenses to the purchaser; which would have an effect upon the use and enjoyment of the lot by the purchaser for the purpose for which it is sold or which would adversely affect the value of the lot.

(k) *Modification of Format or Content.* The Secretary may require or permit modification to the content and format of the Property Report to include additional information or to change the sequence or position of information when such changes are deemed to be in the public interest, for the protection of purchasers or to accommodate those states which agree to utilize the Federal Statement of Record for meeting state disclosure requirements.

(l) *Required Documentation.* Where the documentation required by the Statement of Record cannot be obtained, the Secretary may permit the best available alternative documentation to be substituted.

(m) *Final Version of Property Report.* On the date that a Statement of Record becomes effective, the Property Report portion shall become the Property Report for the subject subdivision. The version of the Property Report delivered to prospective lot purchasers shall be verbatim to that found effective by the Secretary and shall have no covers, pictures, emblems, logograms or identifying insignia other than as required by these regulations. It shall meet the same standards as to grade of paper, type size, margins, style and color of print as those set herein for the Statement of Record, except where required otherwise by these regulations. However, the date of typing or preparation of the pages and the OILSR number shall not appear in the final version. If the final version of the Property Report is commercially printed, or photocopied by a process which results in a commercial printing quality, and is bound on the left side, both sides of the pages may be used for printed material. If it is typed or photocopied by a process which does not result in a clear and legible product on both sides of the page or is bound at the top, printing shall be done on only one side of the page. Three copies of the final version of the Property Report, in the exact form in which it is delivered to prospective lot purchasers, shall be sent to this Office within 20 days of the date on which the Statement of Record, amendment, or consolidation is allowed to become effective by the Secretary. If a Property Report in a foreign language is used as required by § 1715.25(g), three copies of that Property Report together with copies of the translated documents shall be furnished the Secretary within 20 days of the date on which the advertising is first used. A Property Report prepared pursuant to these regulations shall not be distributed to potential lot purchasers until after the Statement of Record of which it is a part or any amendment to that Statement of Record has been made effective by the Secretary.

§ 1710.105 Cover page.

(a) The cover page of the Property Report shall be prepared in accordance with the following directions and, with the exception of size, shall be in a form identical to the sample printed herein except that the red print called for in the following paragraph appears as black on the sample.

(1) The margins shall be at least 1 inch.

(2) The next 3 inches shall contain a warning, centered, in ½ inch capital letters in red type with ¼ inch space between the lines which reads as follows:

"READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING"

(3) The remainder of the page shall contain the following paragraphs, double spaced and beginning ¼ inch below the last line of the warning:

"This Report is prepared and issued by the developer of this subdivision. *It is NOT prepared or issued by the Federal Government.*

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OR THIS PROPERTY.

If you received this Report less than 48 hours prior to signing a contract or agreement, you have until midnight of the third business day following the consumation of the transaction to cancel it by notice to the developer.

Name of Subdividion.....
Name of Developer.....
Date of this Report.....

(4) At the time of submission, the developer may indicate its intention to comply with the red printing by a drawing or by a statement to that effect.

(5) The "Date of This Report" shall be the date on which the Secretary allows the Statement of Record to become effective and shall not be entered until the submission has become effective.

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SAMPLE FEDERAL COVER SHEET

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This Report is prepared and issued by the developer of this subdivision. It is NOT prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report less than 48 hours prior to signing a contract or agreement, you have until midnight of the third business day following the consumation of the transaction to cancel it by notice to the developer.

NAME OF SUBDIVISION _____

NAME OF DEVELOPER _____

DATE OF THIS REPORT _____

BILLING CODE 4210-01-C

§ 1710.106 Table of Contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page on which they appear. For example, the entry for Title and Land Use would appear as follows:

Title and Land Use # Page #
Method of Sale
Encumbrances, Mortgages and Liens
Recording the Contract and Deed
Payments
Restrictions on the Use of Your Lot
Plat Maps, Zoning, Surveying, Permits and Environment

(b) Use of "You" and "We".

At the end of the Table of Contents insert the following remark: "In this Property Report, the words "you" and "your" refer to the buyer. The words "we", "us" and "our" refer to the developer.

§ 1710.107 Risks of buying land.

(a) The next page shall be headed "Risks of Buying Land" and shall contain the paragraphs listed below. However, paragraph (2) may be omitted if all improvements have been completed or if no improvements are proposed.

(1) The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

(2) Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed.

(3) Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

(4) Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size, planning and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

(5) In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

(b) Warnings.

If the instructions or the Secretary require any warnings to be included in the Property Report portion, the following statement shall be added beneath the "Risks of Buying Land" under a heading "Warnings":

"Throughout this Property Report there are specific warnings concerning the developer, the subdivision or individual lots. Be sure to read all warnings carefully before signing any contract or agreement."

Both the heading, "Warnings", and the statement shall be printed in capital letters and enclosed in a box.

§ 1710.108 General information.

Insert and complete the following format:

"This Report covers —— lots located in ——— County, (*State*). See Page —— for a listing of these lots. It is estimated that this subdivision will eventually contain ——— lots."
"The developer of this subdivision is:

_____

(Developer's Name)

_____

(Developer's Address)

_____

(Developer's telephone number)
"Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above."

§ 1710.109 Title to the property and land use.

(a) *General Instructions.* (1) Below the heading "Title to the Property and Land Use" insert the following introductory paragraphs:

"A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but doesn't give you legal title. You won't have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title."

"Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance."

(2) *Information to be provided.* After the above introductory paragraphs provide the information required by the following instructions and questions. Follow a general form identical to the sample page printed in § 1710.102.

(b) *Method of Sale*—(1) *Sales Contract and Delivery of Deed.* (i) Will the buyer sign a purchase money or installment contract or similar instrument in connection with the purchase of the lot? When will a deed be delivered?

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under "Method of Sale":

"If you fail to make your payments required by the contract, you may lose your lot and all monies paid."

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption "Sales contract and delivery of deed":

"The (indicate subdivision developer, owner, or their creditors) can place a mortgage on or encumber the lots in this subdivision after they are under contract. This may cause you to lose your lot and any monies paid on it."

(2) *Type of Deed.* What type of deed will be used to convey title to lots in the subdivision?

(3) *Quitclaim Deeds.* If a quitclaim deed is to be given to lot purchasers insert the below warning, or a warning which is substantially the same, in the disclosure narrative below the caption "Quitclaim Deeds". This particular warning may be deleted at the direction of the Secretary if an acceptable attorney's opinion is submitted with the Statement of Record which indicates that a quitclaim deed has a meaning in the jurisdiction where the subdivision is located which is substantially contrary to the effect of this warning. This warning shall be phrased substantially as follows:

"The Quitclaim deed used to transfer title to lots in this subdivision gives you no assurance of ownership of your lot."

(4) *Oil, Gas, and Mineral Rights.* If oil, gas or mineral rights have been reserved, insert the following statement or one substantially the same in the narrative answer under the caption "oil, gas, and mineral rights":

"The (indicate oil, gas, or mineral rights) to (state which lots) in this subdivision will not belong to the purchaser of those lots. The exercise of these rights could affect the use, enjoyment and value of your lot.

(c) *Encumbrances, Mortgages and Liens.*—(1) *In General.* State whether any of the lots or common facilities which serve the subdivision, other than recreation facilities, are subject to a

blanket encumbrance, mortgage or lien. If yes, identify the type of encumbrance (e.g. deed of trust, mortgage, mechanics liens), the holder of the lien, and the lots covered by the lien. If any blanket encumbrance, mortgage, or lien is not current in accordance with its terms, so indicate.

(2) *Release Provisions.* (i) Explain the effect of any release provisions of any blanket encumbrance, mortgage or lien and include the one of the following statements that pertains.

(A) If the release clauses are not included in a recorded instrument, insert the following statement or one substantially the same in the disclosure narrative below the caption "Release Provisions": "The release provisions for the (indicate all or particular lots) have not been recorded. Therefore, they may not be honored by subsequent holders of the mortgage. If they are not honored, you may not be able to obtain clear title to a lot covered by this mortgage until we have paid the mortgage in full, even if you have paid the full purchase price of the lot. If we should default on the mortgage prior to obtaining a release of your lot, you may lose your lot and all monies paid."

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the mortgage, the statement shall be supported by documentation supplied in § 1710.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser's payments are set aside to pay the release price before any payments are made to the developer.

(C) (*1*) If there are no provisions in the blanket encumbrance for release of an individual purchaser's lot from a blanket encumbrance, include the following warning or a warning substantially the same, in the disclosure narrative under the "Release Provisions" caption:

"The (state type of encumbrance) on (indicate all or particular lots) in this subdivision does not contain any provisions for the release of an individual lot when the full purchase price of the lot has been paid. Therefore, if your lot is subject to this (state type of encumbrance), you may not be able to obtain clear title to your lot until we have paid the (state type of encumbrance) in full, even though you may have received a deed and paid the full purchase price of the lot. If we should default on the (state type of encumbrance) prior to obtaining a release, you may lose your lot and all monies paid."

(2) If the provisions for release of individual lots from the blanket encumbrance may be exercised only by the developer insert the following statement, or one substantially the same, in the disclosure narrative under the "Release Provisions" caption:

"The release provisions in the (state the type of encumbrance) on (indicate all or particular lots) in this subdivision may be exercised only by us. Therefore, if we default on the (state type of encumbrance) before obtaining a release of your lot, you may lose your lot and any money you have paid for it."

(d) *Recording the Contract and Deed.*—(1) *Method or Purpose of Recording.* (i) State what protection, if any, recording of deeds and contracts gives a lot purchaser in your jurisdiction.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the following, or substantially the same, warning in the disclosure narrative under the caption "Method and Purpose of Recording": "Unless your contract or deed is recorded you may lose your lot through the claims of subsequent purchasers or subsequent creditors of anyone having an interest in the land". The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2) *Title Insurance.* If the developer does not deliver a title insurance policy to the buyer, state that the purchaser should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the lot. Recommend that an appropriate professional should interpret the opinion or policy.

(e) *Payments.*—(1) *Escrow.* If purchasers' deposits, down payments, or installment payments are to be placed in a third party controlled escrow or similar account, describe the arrangement including the name and address of the escrow holder or similar person. If there is no such arrangement, insert the following statement in the disclosure narrative under the caption "Escrow":

"You may lose your (indicate deposit, down payment and/or installment payments) on your lot if we fail to deliver legal title to you as called for in the contract, because (they are/it is) not held in an escrow account which fully protects you."

The questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is under the control of an independent third party, allowing a purchaser to receive a return of all money paid in the event of the developer's failure to convey title or the developer's default on any obligation which would otherwise result in the purchaser's loss of that money.

(2) *Prepayments.* Explain any prepayment penalties or privileges in everyday language.

(3) *Default.* What are the developer's or subdivision owners' remedies against a defaulted purchaser?

(f) *Restrictions on the use of your lot.*—(1) *Restrictive Covenants.* (i) Have any restrictive covenants been recorded against the land in the subdivision? If so, do they contain items which require the purchaser to secure permissions, approvals or take any other action prior to using or disposing of his lot (e.g., architectural control, developer's right of first refusal, building deadlines, ect.)? If any of these or similar items are included, explain their meaning and effect upon the purchaser.

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that, since there are no restrictive covenants on the use of the lots, they may be used for purposes which could adversely affect the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: "A complete copy of these restrictions is available upon request."

(2) *Easements.* (i) Are there easements which may have an effect on the purchaser's building or lot use plans (e.g., large drainage easements along lot lines, high voltage electric transmission lines, pipe lines or drainage easements which encroach upon the building area of the lot or inhibit its use)?

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g) *Plats, Zoning, Surveying, Permits and Environment.*—(1) *Plats.* (i) Have the subdivision plans and plats of specific units been approved by the regulatory authorities? If the approvals have not been obtained, include a warning to the effect that regulatory authorities have not approved the proposed plats; that they may require significant alterations before they will approve them and they may not allow the land to be used for the purpose for which it is being sold.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2) *Zoning.* For what purpose may the lots be used (e.g., single family homes, camping, commercial)? Does this use conform to local zoning requirements and the restrictive covenants?

(3) *Surveying.* Has each lot been surveyed and is each lot marked for identification? If not, and the purchaser is responsible for the expense, state the estimated cost.

(4) *Permits.* Must the purchaser obtain a building permit before beginning construction on his lot? Where is the permit obtained? Are any other permits necessary to use the lot for the purpose for which it is sold or for construction in connection with its use?

(5) *Environment.* Has there been any environmental impact study prepared which considers the effect of the subdivision on the environment? If a study has been prepared, summarize any adverse conclusions and refer the lot buyer to the proper State Clearinghouse for complete information. If a study has not been prepared, include a statement that "No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area."

[If the developer does not know whether an environmental impact study has been prepared, or the name and location of the Office where any study made can be found, inquiry should be made to the State or Area Clearinghouse established under the authority of Title IV of the Intergovernmental Cooperation Act of 1968].

§ 1710.110 Roads.

(a) *Access to the Subdivision.* (1) Is access to the subdivision provided by public or private roads? What type of surface do they have? How many lanes? What is the width of the wearing surface?

(2) Who is responsible for their maintenance? What is the cost to the purchaser, if any? Are any improvements contemplated? If so, when will they begin and when will they be completed? At whose expense?

(b) *Access within the Subdivision.* (1) How have legal and physical access by conventional automobile been or will they be, provided to the lots (e.g., road on recorded easement; right of way dedicated to the public; right of way dedicated to use of lot owners)?

(2) Who is responsible for the road construction? Is there any construction cost to the purchaser? Is there any financial assurance of completion? If there is no financial assurance of completion, enter a warning to the effect that no funds have been set aside in an escrow or trust account and there are no other financial arrangements to assure completion of the roads.

(3) How many lanes do the interior roads have? What is the estimated starting date of construction (month and year); the present percentage of construction now complete; the present surface; the estimated completion date (month and year) and what is the final surface to be? If there are separate units or sections in the subdivision which will have different completion dates or different surfaces, the following chart shall be used rather than a narrative paragraph.

Unit	Estimated starting date (month/year)	Percentage of Construction now complete	Estimated Completion date (month/year)	Present surface	Final surface

(4) Who is responsible for road maintenance? If the roads are to be maintained by a public authority, a property owners' association or some other entity at some time in the future, who is responsible for their maintenance during the interim period? What is the cost to the purchaser during the interim period and after acceptance for permanent maintenance? Will they be maintained so as to provide access to the lots on a year round basis? If not, include a warning which informs the purchaser that access may not be available year round. Identify the months when access may not be available to lots. If there are no arrangements for maintenance, include a warning to the effect that purchasers are responsible for maintaining the roads and that, if maintenance is not performed, the roads may soon deteriorate and access may become difficult or impossible.

(5) If estimated completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the roads are 100 percent completed, no dates are needed.

(6) Complete the following chart by listing the county seat (identify) and at least two nearby communities.

Include at least one community of significant size which offers general services.

Nearby Communities.....
Population
Distance Over Paved Roads.....
Distance Over Unpaved Roads.....
Total.....

(7) If the purchasers will be individually responsible for providing access to their lots and for maintaining that access, what is the estimated cost of construction and maintenance?

§ 1710.111 Utilities.

(a) *Water.* (1) How is water to be supplied to the individual lots (e.g., central system or individual wells)? Of the following items only those which apply to the subdivision need be included.

(i) *Individual System.* (A) If water is to be supplied by an individual private well, cistern or other individual system, what are the total estimated costs of the system, including but not limited to, the costs of installation, storage, any

treatment facilities and other necessary equipment?

(B) If individual cisterns or similar storage tanks are to be used, state where water to fill them can be secured; the cost of the water, and its delivery costs for a supply sufficient to serve the monthly needs of a family of four living in a house on a year-round basis. Include a statement to the effect that water stored for extended periods tends to become stale and may acquire an unpleasant taste or odor.

(C) If individual wells are to be used and if the sales contract contains no provisions for refund or exchange in the event a productive well cannot be installed, include a statement to the effect that there is no assurance a productive well can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If individual wells or individual cisterns are to be used, include a brief statement to the effect that the purity and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

(E) If there have been no hydrological surveys in connection with the use of individual wells or sources of hauled water for cisterns, include a warning to the effect that there is no assurance of a sufficient supply of water for the anticipated population.

(F) Is a permit required to install the individual system to be used? If so, from whom and where is the permit secured? State the cost of a permit.

(ii) *Central system.* (A) If water is to be provided by a central system, who is the supplier? What is the supplier's address?

(B) Will the water mains be extended in front of, or adjacent to, each lot? When will construction begin? What is the present percentage of completion of the water mains and central supply plant? When will service be available to the individual lots? If the central system is not complete and there are separate units or sections of the subdivision included in the Statement of Record which have different completion dates, then the starting date for construction (month and year), the percentage of construction now complete and the estimated service availability date (month and year) shall be set forth in the following chart form rather than in a narrative paragraph.

Water

Unit	Estimated Starting Date (month and year)	Percentage of Construction now complete	Estimated Service availability date (month and year)

(C) What is the present capacity of the central plant (i.e., how many connections can be supplied)? If the capacity is not sufficient to serve all lots in the Statement of Record and is to be expanded in phases, what is the time-table for each phase to be in service and what will trigger the beginning of the expansion for each phase? If an entity other than the developer or an affiliate or subsidiary of the developer will supply the water for the central system; if the operation of that entity is supervised by a governmental agency and if that entity states it can supply the anticipated population of the development, then information as to the capacity of the plant and a hydrological survey is not necessary. If the entity does not indicate it can supply enough water for the anticipated population or if the capacity of any central system is not sufficient to serve all lots in the Statement of Record, include a warning which describes the limitations and sets forth the number of lots which can now be served.

(D) Have there been any hydrological surveys to determine that a sufficient source of water is available to serve the anticipated population of the subdivision? Has the water in the central system been tested for purity and chemical content? If so, did the results show that the water meets all standards for a public water supply? If there have been no hydrological surveys showing a sufficient supply of water or no tests for purity and chemical content for the central system, include a warning to the effect that there is no assurance of a sufficient supply or that the water is drinkable.

(E) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the water system.

(F) If the developer or an affiliate or subsidiary of the developer operates the central system, have all permits been obtained from the proper agencies for the construction, use and operation of the central system? If not, include a warning to the effect that the required permits, approvals or licenses for construction, operation or use of the water system have not been obtained, therefore there is no assurance the system can be constructed or used.

(G) If previous completion dates given in prior Statements of Record have not been met, state that previous completion dates have not been met and give the previous dates. Underline the answer. If the central water system is 100 percent completed, no dates are needed.

(H) Is the purchaser to pay any construction costs, one-time connection fees, availability fees, special assessments or deposits for the central system? If so, what are the amounts? If not, state there are no charges other than use fees. If the purchaser will be responsible for construction costs of the water mains, state the cost to install the mains to the most remote lot covered by this report.

(I) If a purchaser wishes to use a lot prior to the date central water is available to it, may the purchaser install an individual system? If so, include the information required for individual systems in § 1710.111(a)(1)(i). Will the purchaser be required to discontinue use of any individual system and connect to the central system when service is available to the lot? If the purchaser is not required to connect to the central system, must any construction costs, connection fees, availability fees, special assessments or deposits in connection with the central system still be paid? If an individual system may not be installed, so state and indicate water will not be available until the central system is extended to the lot.

(J) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(K) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the estimated date and conditions of the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumbrance, state the estimated amount of either and the terms for retirement of either obligation.

(L) If the supplier of water is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the water system nor the rates are regulated by a public authority.

(M) The following warning, shall be included unless:

(*1*) The central water system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or;

(*2*) The central water system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

"We do not own or operate the central water system so we cannot assure its continued availability for your use."

(b) *Sewer.* (1) What methods of sewage disposal are to be used (e.g., central system, comfort stations or individual on-site systems such as septic tanks, holding tanks, etc.) in the subdivision? Of the following items, only those which apply to the subdivision need be included.

(i) *Individual systems.* (A) If individual systems are to be used, have the local authorities given general approval to the use of these systems in the subdivision or have they given specific approval for each lot?

Are permits necessary? From whom and where are they obtained? Must testing of the lot be done prior to the issuance of a permit? State the cost of a permit and the estimated costs of the system and any necessary tests.

(B) If holding tanks are to be used, state whether pumping and hauling service is available and the estimated monthly costs of that service for a family of four living in a house on a year-round basis.

(C) If each and every lot has not been approved for the use of an individual on-site system, include a warning to the effect that there is no assurance permits can be obtained for the installation and use of individual on-site systems. If the sales contract contains no provisions for refund or exchange in the event a permit cannot be obtained, include a statement to the effect that there is no assurance an individual on-site system can be installed and, if it cannot, no refund of the purchase price of the lot will be made.

(D) If no permit is required for the installation and use of individual on-site systems, explain whether this may have an effect upon the purchaser or the availability of construction or permanent financing.

(E) If the developer has knowledge that permits for the installation of individual on-site systems have been denied; that there have been unsatisfactory percolation tests or that systems have not operated satisfactory in the subdivision, state the number of these rejections, unsatisfactory tests or operations.

(ii) *Comfort Stations.* (A) If comfort stations are to be used, how many lots will be served by each station? When will construction be started? When will the station or stations be completed and ready for use? Have the necessary permits been obtained for the construction and use of comfort stations? If the necessary permits have not been obtained, include a warning that the necessary permits, approvals or licenses have not been obtained for the construction and use of the comfort stations, therefore there is no assurance they can be constructed or used. If there are comfort stations located in different units and having different completion dates, the following chart shall be used to show the estimated construction starting date (month and year), the present percentage of completion and the date on which they will be used rather than a narrative paragraph.

Comfort Stations

Unit.....
Estimated Starting Date (month-year).....
Percentage of Construction now complete.....
Estimated Service Availability Date (month and year).....

(B) Who is to construct the comfort stations? Is there any financial assurance of their completion? If not, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure completion of the comfort stations and there is no assurance the facilities will be completed.

(C) Who will be responsible for maintenance of the comfort stations? Is there any cost to the purchaser for construction, use or maintenance?

(iii) *Central system.* (A) If a central sewage treatment and collection system is being installed, who is responsible for construction of the system? Will the sewer mains be installed in front of, or adjacent to, each lot? When will construction be started (month and year)? When will service be available (month and year)? Who will own and operate the system? Give the name and address of the entity.

(B) What is the present percentage of completion and the present capacity of the system (i.e., number of connections which can be served)? If the present capacity is not sufficient to serve all lots in the Statement of Record and it is to be expanded in phases, what is the time-table for expansion and what will trigger that expansion? If the central system is not complete and there are separate units or sections of the subdivision which have different service availability dates, the following chart shall be used to show the construction starting date (month and year); the percentage of completion and service availability date (month and year) in each unit or section rather than a narrative paragraph.

Sewer

Unit Estimated Starting Date (month/year).....
Percentage of Construction now complete.....
Estimated Service Availability Date (month/year).....

If sewage treatment facilities are to be supplied by an entity which is regulated by a governmental agency and which is not the developer or an affiliate or subsidiary of the developer and the entity has stated it can serve the anticipated population of the development, then information on capacity need not appear.

(C) If the developer or an affiliate or subsidiary of the developer operates the central system, have all necessary permits been obtained for the construction, operation and use of the the central system? Do these permits limit the number of connections or homes which the system may serve? If the permits have not been obtained, enter a warning to the effect that the necessary permits, approvals or licenses have not been obtained for the central sewage system; therefore there is no assurance that the system can be completed, operated or used.

(D) If the system cannot now serve all lots included in the Statement of Record, either because the supplier of the service has not stated it can and will serve all lots or if construction has not reached a stage where all lots can be served or permits to serve all lots have not been obtained, include a warning which states that all lots cannot now be served; the number which can be served and the reason for the lack of capacity.

(E) Will the purchaser pay any construction costs, special assessments, one time connection fees or availability fees? What are the amounts of these charges? If the purchaser is to pay construction costs of the sewer mains, state the cost of installation of the mains to the most remote lot in this Report.

(F) If the purchaser wishes to use the lot prior to the date central sewer service is available, may the purchaser install an individual system? If so, include the information on individual systems required by § 1710.111(b)(1)(i). Will the purchaser be required to discontinue use of the individual system

and connect to the central system when service is available? If the purchaser is not required to connect to the central system, must the purchaser still pay any construction costs, connection fees, availability fees, or special assessments? If the purchaser may not install an individual system, so state and indicate service will not be available until the central system reaches the lot.

(G) If connection to the system is voluntary and not all purchasers elect to use the system, will the cost to those who do use the system be increased? If so, include a statement to the effect that connection to the central system is voluntary and those who use the system may have to pay a disproportionate share of the cost of the system and its operation.

(H) Is there any financial assurance of completion of the central system and any future expansion? If not, include a warning that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure the completion of the central system; therefore there is no assurance that it will be completed.

(I) If previous completion dates given in prior Statements of Record have not been met, state that previous dates have not been met and give the previous dates. Underline the answer. If the central sewage treatment and collection system are 100 percent completed, no dates are needed.

(J) If the developer is to construct the system and will later turn it over to a property owners' association for operation and maintenance, state the date of the transfer and whether there will be any charge for the conveyance and if it will be conveyed free and clear of any encumbrance. If there is a charge or if the association must assume an encumberance, state the estimated amount of either and the terms for retirement of either obligation.

(K) If the owner or operator of the central sewer system is other than a governmental agency or an entity which is regulated and supervised by a governmental agency, state that neither the operation of the sewer system nor the rates are regulated by a public authority.

(L) The following warning, shall be included unless:

(*1*) The central sewer system is owned and operated by the developer, or an affiliate or subsidiary of the developer, or;

(*2*) the central sewer system is owned and operated by a governmental agency or by an entity which is regulated and supervised by a governmental agency.

We do not own or operate the central sewer system so we cannot assure its continued availability for your use.

(c) *Electricity.* (1) Who will provide electrical services to the subdivision?

(2) Have primary electrical service lines been extended in front of, or adjacent to, all of the lots? If not, when (month and year) or under what conditions will construction begin and when will service be available? If they have not been installed, who is responsible for their construction?

If electrical service lines have not been extended in front of, or adjacent to, all lots and there are separate units or sections having different service availability dates, the following chart shall be used rather than a narrative paragraph.

Electric Service

Unit	Estimated starting date (month and year)	Percentage of construction complete	Estimated service availability date (month and year)

(3) If construction of the lines or service to the ultimate consumer is provided by an entity other than a publicly regulated utility, who provides, or will provide, the service? Who will be responsible for maintenance? What is the assurance of completion? If service is not provided by a publicly regulated utility, what charges or assessments will the purchaser pay?

(4) If the primary service lines have not been extended in front of, or adjacent to each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of primary lines? Based on that policy, what would be the cost to the purchaser for extending primary service to the most remote lot in this Report?

(5) If electrical service will not be provided, what is an alternate source (e.g., generators, etc.) and what are the estimated costs?

(6) If the lines are to be installed by some entity other than a publicly regulated utility and if there is no financial assurance of completion, include a warning to the effect that no funds have been set aside in an escrow or trust account nor have any other financial arrangements been made to assure construction of the electric lines.

(d) *Telephone.* (1) Is telephone service now, or will it be, available? Who will furnish the service?

(2) Have the service lines been extended in front of, or adjacent to, each of the lots? If not, when, and under what conditions, will construction be started and when will service be available (month and year)?

(3) If the service lines have not been extended in front of, or adjacent to, each lot, will the purchaser be responsible for any construction costs? If so, what is the utility company's policy and charges for extension of service lines? Based on that policy, what would be the cost to the purchaser of extending service lines to the most remote lot in this Report?

(e) *Fuel or other Energy Source.* (1) What fuel, or other energy source, will be available for heating, cooking, etc. in the subdivision? If other than electricity is to be used, describe the availability of the fuel or other energy source. Give the name and address of the supplier. If the fuel is natural gas, when will the mains be installed to the lots? What is the cost to the purchaser for installation fees and connection fees? If oil or propane gas will be used, include the cost of a storage tank.

§ 1710.112 Financial Information.

(a) The information required by paragraphs (b) and (c) of this section need appear only if the answer to the question is an affirmative one.

(b) Has the developer had a deficit in retained earnings or experienced an operating loss during the last fiscal year or, if less than a year old, since its formation? If so, include a statement to the effect that this may affect the developer's ability to complete promised facilities and to discharge his financial obligations.

This statement may be omitted if: (1) All facilities, utilities and amenities proposed to be completed by the developer in the Property Report and sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold, or if:

(2)(i) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by the developer in either the Property Report or sales contract so that all lots included in the Statement of Record will then be usable for the purpose for which they are sold by the dates set out in the Property Report or contract, and;

(ii) The developer has made financial arrangements, such as the posting of surety bonds (Corporate or individual promissory notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts which assure the completion of all facilities, utilities and amenities promised by the developer in the Property Report or contract, and;

(iii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with OILSR as outlined in §1710.212(d), and;

(iv) Any deposits on down payments are held in an escrow or trust account.

(c) If the developer's financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear:

A copy of our financial statements for the period ending ———— is available from us upon request.

§ 1710.114 Recreational facilities.

(a) *Recreational Facilities To Be Covered.* Unless otherwise indicated, all information required by paragraphs (b) and (c) of this section shall be provided for only those recreational facilities which are:

(1) Within, adjacent or contiguous to the subdivision, and;

(2) Maintained substantially for the use of lot owners.

(b) *Recreational Facility Chart.* Complete the below chart in accordance with the instructions which follow it. This chart shall immediately follow the § 1710.114 heading. Limit the chart to facilities provided essentially for use of lot buyers.

Facility	Percentage of construction now complete	Estimated date of start of construction (month/year)	Estimated date available for use (month/year)	Financial assurance of completion	Buyer's annual cost or assessments

(e) The information furnished in § 1710.212(b) may necessitate a warning as to costs and/or feasibility of the completion of the subdivision.

§ 1710.113 Local Services.

(a) *Fire Protection.* Describe the availability of fire protection and indicate whether it is available year round.

(b) *Police Protection.* Describe the availability of police protection.

(c) *Schools.* State whether elementary, junior high and senior high schools are available to residents of the subdivision. Is school bus transportation available from within the subdivision?

(d) *Hospital.* Give the name and location of the nearest hospital and state whether ambulance service is available.

(e) *Physicians and Dentists.* State the location of the nearest physicians' and dentists' offices.

(f) *Shopping Facilities.* State the location of the nearest shopping facilities.

(g) *Mail Service.* If there is no mail service to the subdivision, describe the arrangements the purchasers must make to receive mail service.

(h) *Public Transportation.* Is there public transportation available in the subdivision or to nearby towns? If not, give the location of the nearest public transportation and the distance from the subdivision.

(1) *Facility.* Identify each recreational facility. Identify closely related facilities (e.g. swimming pool and bathhouse) separately only if their availability dates differ. If for any proposed or partially constructed recreational facility listed, the related construction plan information required by § 1710.214(a) "Recreational Facilities" is not available, include a warning, printed below the chart and referenced to the name of the facility on the chart by an asterisk or other appropriate symbol. This warning shall be phrased substantially as follows:

"The plans for the (identify the facility) are so indefinite it may not be completed."

If any recreational facility is not owned by the developer, insert a warning below the chart phrased substantially as follows:

We do not own the (name of facility or facilities) so we can not assure its (their) continued availability.

(2) *Percent complete.* State the present percentage of completion of construction for each recreational facility.

(3) *Estimated Date of start of construction.* Insert the estimated date of the start of construction for the facility (month and year).

(4) *Estimated Date Available For Use.* If the construction of the facility is not complete or if it is not available to lot owners for its intended use, indicate the estimated date (month and year) that the facility will be available for use. If the "estimated date available for use" for any facility has been amended to delay it to a later date, indicate such delay in a statement immediately below the chart. Underline the response.

This statement shall include the name of the facility and the prior estimated availability date, and it shall be referenced to the appropriate facility listed on the chart by use of an asterisk or other appropriate symbol. If a facility is 100 percent completed and in use, no date is needed.

(5) *Financial Assurance of Completion.* If the construction of the facility is not complete, state whether there is any financial assurance of completion. If none, state "none". If such exists, state the type of assurance (i.e. bond, escrow, or trust). If no documentation for such assurance has been provided in § 1710.214 of the Statement of Record, then do not indicate such assurance on the chart, but in place of such assurance on the chart state "none".

(6) *Buyer's Annual Cost or Assessments.* State the lot buyer's annual cost or assessments for using the facility. These costs should include any applicable property owners' association assessment, and the developer's maintenance assessment. If the cost information is lengthy, you may use an asterisk or other appropriate symbol and include the cost information in a paragraph below the chart.

(c) Information to be provided below the recreational facility chart and related warnings.

(1) *Constructing the Facilities.* If the facilities are not complete, indicate who is responsible for the construction of the facilities and indicate whether the developer is or is not contractually obligated to the purchaser to complete these recreational facilities. Indicate whether the purchaser will be required to pay any of the cost of construction of any of these facilities (estimate and disclose such cost, if any).

(2) *Maintaining the Facilities.* Indicate who is responsible for the operation and maintenance of these facilities.

(3) *Facilities which will be leased to Lot Purchasers.* If no facilities covered here will be leased to a Property Owners' Association or other lot owners in the subject subdivision, omit this caption and any information requested under it from the Property Report. If such leases exist or are anticipated, state which facilities are or will be leased and indicate the term of the lease. Also, state whether the lot owners will have an opportunity to terminate or ratify the lease after control of the Property Owners' Association is turned over to them. Indicate whether the owner of a recreational facility leased to the Property Owners' Association or other lot owners may encumber it and whether the holders of such encumbrances may acquire the leased facilities and not honor the lease. Indicate whether the lease payments may be increased on an escalating or other basis and what costs or expenses, if any, will be borne by the owner. State whether the lease can be assigned or sublet. State how the lease can be terminated.

(4) *Transfer of the Facilities.* If there are presently any liens or mortgages on any of these recreational facilities, describe such liens or mortgages. If the developer, or owner of the subdivision, their principals, or subsidiaries, intend to transfer the title of a listed recreational facility in the future, explain at what time, by what type of conveyance, and to whom such transfer will be made. Disclose any adverse effects on, or cost to, lot purchasers which may be caused by such transfer. If any facility is to be transferred to lot owners as a Property Owners' Association or otherwise, state whether the facility will be transferred free and clear of all liens and encumbrances. If not, state the amount of the encumbrance to be assumed and disclose any contractual conditions on such transfer which relate to lot purchasers.

(5) *Permits.* If the necessary permits have not been obtained for the construction and/or use of the facilities, identify the facilities for which such permits have not been obtained and include the following statement, or one substantially the same, in the narrative under the caption "Permits".

"The (identify the permit or license) has not been obtained and therefore there is no assurance that the lot owners will be able to use the (identify the facility)".

(6) *Who may use the Facilities.* Indicate who will be permitted to use the recreational facilities (e.g., lot owners, their guests, employees of developer, general public, etc.). If the general public will be permitted to use the facilities include the following statement in the narrative under the caption "Who may use the Facilities":

"The (identify the facility) is open to use by the general public and their use of the facility may limit use of it by lot owners".

§ 1710.115 Subdivision characteristics and climate.

(a) *General Topography.* What is the general topography and the major physical characteristics of the land in the subdivision? State the percentage of the subdivision which is to remain as natural open space and as developed parkland. Are there any steep slopes, rock outcroppings, unstable or expansive soil conditions, etc., which will necessitate the use of special construction techniques to build on, or use, any lot in the subdivision? If so, identify the lots affected, and describe the techniques recommended. If any lots in the subdivision have a slope of 20%, or more, include a warning that Some lots in this subdivision have a slope of 20%, or more. This may affect the type and cost of construction.

(b) *Water Coverage.* Are any lots, or portions of any lots, covered by water at any time? What lots are affected? When are they covered by water? How does this affect their use for the purpose for which they are sold? Can the condition be corrected? At what cost to the purchaser?

(c) *Drainage and fill.* Identify the lots which require draining or fill prior to being used for the purpose for which they are being sold. Who will be responsible for any corrective action? If the purchaser is responsible, what are the estimated costs?

(d) *Flood plain.* Is the subdivision located within a flood plain or an area designated by any Federal, State or local agency as being flood prone? What lots are affected? Is flood insurance available? Is it required in connection with the financing of any improvements to the lot? What is the estimated cost of the flood insurance?

(e) *Flooding and Soil Erosion.* (1) Does the developer have a program which provides, or will provide, at least minimum controls for soil erosion, sedimentation or periodic flooding throughout the subdivision?

(2) If there is a program, describe it. Include in the decription information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. (A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and;

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.)

(f) *Nuisances.* Are there any land uses which may adversely affect the subdivision (e.g., unusal or unpleasant noises or odors, pollutants or nuisances such as existing or proposed industrial activity, military installations, airports, railroads, truck terminals, race tracks, animal pens, noxious smoke, chemical fumes, stagnant ponds, marshes, slaughterhouses and sewage treatment facilities)? If any nuisances exist, describe them. If there are none, state there are no nuisances which affect the subdivision.

(g) *Hazards.* (1) Are there any unusual safety factors which affect the subdivision (e.g., dilapidated buildings, abandoned mines or wells, air or vehicular traffic hazards, danger from fire or explosion or radiation hazards)? Is the developer aware of any proposed plans for construction which may create a nuisance or safety hazard or adversely affect the subdivision? If there are any existing hazards or if there is any proposed construction which will create a nuisance or hazard, describe the hazard or nuisance. If there are no existing or possible future hazards, state that there are none.

(2) Is the area subject to natural hazards or has it been formally identified by any federal, state or local agency as an area subject to the frequent occurrence of natural hazards (e.g., tornadoes, hurricanes, earthquakes, mudslides, forest fires, brush fires, avalanches, flash flooding, etc.)? If the jurisdiction in which the subdivision is located has a rating system for fire hazard, state the rating assigned to the land in the subdivision and explain its meaning.

(h) *Climate.* What are the average temperature ranges, summer and winter, for the area in which the subdivision is located (i.e., high, low and mean)? What is average annual rainfall and snowfall?

(i) *Occupancy.* How many homes are occupied on a full or part time basis as of (*date of submission*)?

§ 1710.116 Additional Information.

(a) *Property Owners' Association.* (1) Will there be a property owners' association for the subdivision? Has it been formed? What is its name? Is it operating? If not yet formed, when will it be formed? Who is responsible for its formation?

(2) Does the developer exercise, or have the right to exercise, any control over the Association because of voting rights or placement of officers or directors? For how long will this control last?

(3) Is membership in the association voluntary? Will non-member lot owners be subject to the payment of dues or assessments? What are the association dues? Can they be increased? Are members subject to special assessments? For what purpose? If membership in the association is voluntary and if the association is responsible for operating or maintaining facilities which serve all lot owners, include the following statement: "Since membership in the association is voluntary, you may be required to pay a disproportionate share of the association costs or it may not be able to carry out its responsibilities."

(4) What are the functions and responsibilities of the association? Will the association hold architectural control over the subdivision?

(5) Are there any functions or services that the developer now provides at no charge for which the association may be required to assume responsibility in the future? If so, will an increase in assessments or fees be necessay to continue these functions or services?

(6) Does the current level of assessments, fees, charges or other income provide the capability for the association to meet its present, or planned, financial obligations including operating costs, maintenance and repair costs and reserves for replacement? If not, how will any deficit be made up?

(b) *Taxes.* (1) When will the purchaser's obligation to pay taxes begin? To whom are the taxes paid? What are the annual taxes on an unimproved lot after the sale to a purchaser? If the taxes are to paid to the developer, include a statement that "Should we not forward the tax funds to the proper authorities, a tax lien may be placed against your lot."

(2) If the subdivision is encompassed within a special improvement district or if a special district is proposed, describe the purpose of the district and state the amount of assessments. Describe the purchasers obligation to retire the debt.

(c) *Violations and Litigations.* This information need appear only if any of the questions are answered in the affirmative. Unless the Secretary gives prior approval for it to be omitted, a brief description of the action and its present status or disposition shall be given.

(1) Has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or an entity in which any of them hold a 10% or more financial or ownership interest been disciplined, debarred or suspended by any governmental agency in connection with activities relating to environmental concerns, land sales, land investment, security sales, construction or sale of homes or home improvements or similar or related activities? Is there now pending against any of them an action which could result in their being debarred or suspended or disciplined? OILSR suspension notices on pre-effective Statements of Record and amendments need not be listed.

(2) Has the developer, the owner of the land or any of their principals, officers, directors, parent corporation, subsidiaries or any entity in which any of them hold a 10% or more financial or ownership interest been convicted by any court, or is there now pending against any of them any criminal proceedings in any court, for violation of a Federal, State or local law or regulation in connection with activities relating to environmental concerns, land sales, land investment, securities sales, construction or sale of homes or home improvements or similar or related activity?

(3) Has the developer, the owner of the land, any principal, any person holding a 10% or more financial or ownership interest in either, or any officer or director of either, filed a petition in bankruptcy? Has an involuntary petition in bankruptcy been filed against it or them or have they been an officer or director of a company which became insolvent or was involved, as a debtor, in any proceedings under the Bankruptcy Act during the last 13 years?

(4) Is the developer or any of its principals, any parent corporation or subsidiary, any officer or director a party to any litigation which may have a material adverse impact upon its financial condition or its ability to transfer title to a purchaser or to complete promised facilities? If so, include a warning which describes the possible effects which the action may have upon the subdivision.

(d) *Resale or Exchange Program.* (1) Are there restrictions which might hinder lot owners in the resale of their lots (e.g., a prohibition against posting signs, limitations on access to the subdivision by outside brokers or prospective buyers; the developer's right of first refusal; membership requirements)? If so, briefly explain the restrictions.

(2) Unless the developer now has an operational and active resale program, the following statement shall be included: "We have no program to assist you in the resale of your lot."

(3) Does the developer have an exchange program which a purchaser may use when sales are made prior to an on-site inspection; when proposed facilities are not available to the lot at the time the purchaser is ready to use it or which allows the purchaser to change to a more desirable or higher priced lot? If there is an exchange program, describe it and state whether there are any conditions as to when the request for exchange must be made or as to when building must begin on the new lot.

(4) Is the interest paid on the original transaction credited toward the price of the new lot in any exchange transaction?

(5) If answers to the above items show that there:

(i) Are no restrictions, omit item (1);

(ii) Are no restrictions and there is an operational and active resale program, omit items (1) and (2);

(iii) are no restrictions, no operational and active resale program and no exchange program, or the exchange program does not reserve a sufficient number of lots to accommodate all participants wishing to exchange lots, omit items (1), (3) and (4) and modify the statement in item (2) to include: "nor do we have any provision to allow you to exchange one lot for another;" or "nor do we have a program which assures that you will be able to exchange your lot for another."

(e) *Unusual Situations.* This topic need appear only if one or more of the following cases apply to the subdivision, then only the applicable subject, or subjects, will appear.

(1) *Leases.* What is the term of the lease? Is it renewable? Is it recordable? Can creditors of the developer, or owner, acquire title to the property

without any obligation to honor the terms of the lease? Are the lease payments a flat sum or are they graduated? Can the lessee mortgage or otherwise encumber the leasehold? Will the lessee be permitted to remove any improvements which have been installed when the lease expires or is terminated?

(2) *Foreign Subdivision.* (i) Is the owner or developer of the subdivision a foreign country corporation? If legal action is necessary to enforce the contract, must it be taken in the courts of the country where the subdivision is located?

(ii) Does the country in which the subdivision is located have any laws which restrict, in any way, the ownership of land by aliens? If so, what are the restrictions?

(iii) Must an alien obtain a permit or license to own land, build a home, live, work or do business in the country where the subdivision is located? If so, where is such permit or license secured; for how long is it valid and what is its cost?

(3) *Time Sharing.* (i) How is title to be conveyed? How many shares will be sold in each lot? How is use time allocated? How are taxes, maintenance and utility expenses divided and billed? How are voting rights in any Association apportioned? Are there management fees? If so, what are their amounts and how are they apportioned?

(ii) Is conveyance of any portion of the lot contingent upon the sale of the remaining portions? Is the initial buyer responsible for any greater portion of the expense than his normal share until the remaining interests are sold? If the purchase of any of the portions is financed, will the default of one owner have any effect upon the remaining owners?

(4) *Memberships.* (i) Does the purchaser receive any interest in title to the land? What is the term of the membership? Is it renewable? What disposition is made of the membership in the event of the death of the member? Are the lots individually surveyed and the corners marked? If not, how does the member identify the area which the member is entitled to use? What is the approximate square footage the member is entitled to use? Are there different classes of membership? How are the different classes identified and what are the differences between them?

(ii) If the member does not receive any interest in the title to the land, include a warning to the effect that "you receive no interest in the title to the land but only the right to use it for a certain period of time."

(f) *Equal Opportunity in Lot Sales.* State whether or not the developer is in compliance with Title VIII of the Civil Rights Act of 1968 by not directly or indirectly discriminating on the basis of race, religion, sex or national origin in any of the following general areas: Lot marketing and advertising, rendering of lot services, and in requiring terms and conditions on lot sales and leases.

An affirmative answer cannot be given if the developer, directly or indirectly, because of race, color, religion, sex or national origin is:

(1) Refusing to sell or lease lots after the making of a bona fide offer or to negotiate for the sale or lease of lots or is otherwise making unavailable or denying a lot to any person, or;

(2) Discriminating against any person in the terms, conditions or privileges in the sale or leasing of lots or in providing services or facilities in connection therewith, or;

(3) Making, printing, publishing or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or leasing of lots that indicates any preference, limitation or discrimination against any person, or;

(4) Representing to any person that any lot is not available for inspection, sale or lease when such lot is in fact available, or;

(5) For profit, inducing or attempting to induce any person to sell or lease any lot by representations regarding the entry or non-entry into the neighborhood of a person or persons of a particular race, color, religion, sex or national origin.

(g) *Listing of lots.* Provide a listing of lots which shall consist of a description of the lots included in the Statement of Record by the names or number of the section or unit, if any; the block number, if any; and the lot numbers. The lots shall be listed in the most efficient and concise manner. If the filing is a consolidation, the listing shall include all lots registered to date in the subdivision, except any which have been deleted by amendment.

§ 1710.117 Cost Sheet, Signature of Senior Executive Officer.

(a) *Cost Sheet—Format.* (1) The cost sheet shall be prepared in accordance with the following format and paragraph (a)(2) of this section.

Cost Sheet

In additon to the purchase price of your lot, there are other expenditures which must be made.

Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price

Cash Price of lot	$
Finance Charge	$
Total	$

Estimated one-time charges

1. Water connection fee/installation or private well	$
2. Sewer connection fee/installation of private on-site sewer system	$
3. Construction costs to extend electric and/or telephone services	$
4. Other (Identify)	$
	$
Total of estimated sales price and one-time charges	$

Estimated month/annual charges, exclusive of utility use fees

1. Taxes—Average unimproved lot after sale to purchaser	$
2. Dues and assessments	$

The information contained in this Property Report is an accurate description of our subdivision and development plans.

Signature of Senior Executive Officer

(2) *Cost sheet instructions.* (i) If central water or sewer systems will provide service to the subdivision; if the connection fees for these services are the same throughout the subdivision and if all fees, charges or assessments are the same for all lots, then these figures may be printed. The cash price of the lot, the finance charge and the total estimate of sales price and one-time charges are to be entered at the time the purchaser's signature is secured on the receipt. The references to private wells and sewer systems may be omitted.

(ii) If all lots in the subdivision are to use private wells or sewer systems; if the estimated costs for these items are the same throughout the subdivision and if all other fees, charges or assessments are the same for all lots, then these figures may by printed. The references to the central systems may be omitted. The cash price of the lot, the finance charge and the total estimate of sales price and one-time charges are to be entered at the time the purchaser's signature is secured on the receipt.

(iii) If any of the figures will vary from lot to lot or section to section of the subdivision or if different systems will be used in different areas of the subdivision, then the amounts shall not be entered until the receipt is presented to the purchaser for signature. If a central system will be used in all or part of the subdivision and a private system in all or other parts, then the portion which does not apply to the purchaser's lot shall be crossed out.

(iv) If individual private systems may be used prior to the availability of service from any central system and the

purchaser is not required to connect to any central system, both figures may be entered or only the highest cost figures may be used with a parenthetical explanation or footnote. If the purchaser is required to connect to any central system and discontinue the use of his private system when central service is available, both cost figures shall be given, together with an explanation or footnote.

(v) If there is a one time, lump sum "availability fee" which is assessed to the purchaser in connection with a central utility, include under "other" and identify.

(vi) Dues and Assessments need be included only if they are involuntary regardless of use.

(vii) At the discretion of the Secretary, where there is extreme diversity in the figures for different areas of the subdivision, variations may be permitted as to whether the figures will be printed, entered manually, or a range of costs used or any combination of these features.

(viii) The estimated annual taxes shall be based upon the projected valuation of the lot after sale to a purchaser.

(b) *Signature of the Senior Executive Officer.* The Senior Executive Officer or a duly authorized agent shall sign the property report. Facsimile signatures may be used for purposes of reproduction of the property Report.

§ 1710.118 Receipt, Agent Certification and Cancellation Page.

(a) *Format.* The receipt, agent certification and cancellation page shall be prepared in accordance with the sample printed herein.

BILLING CODE 4210-01-M

Receipt, Agent Certification and Cancellation Page

PURCHASER RECEIPT

IMPORTANT: READ CAREFULLY

Name of Subdivision
OILSR Number Date of Report

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by .....Date .....
Street Address .....
City .....State .....Zip .....

If any representations are made to you which are contrary to those in this Report, please notify the:

Office of Interstate Land Sales Registration
HUD Building, 451 Seventh Street, S. W.
Washington, D. C. 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot _____ Block _____ Section _____

Name of Salesperson .....

Signature ..... Date .....

PURCHASER CANCELLATION

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

.....

Name of Subdivision _____
Date of Contract _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature _____ Date _____

BILLING CODE 4210-01-M

(b) The original and one copy of this page shall be attached to the Property Report delivered to prospective purchasers. Carbon paper may be inserted between the two so that after the purchaser has signed the receipt and the salesman has signed the certification, the copy can be detached and retained by the developer for a period of three years from the date of execution or the term of the contract, whichever is the longer. Upon demand by the Secretary, the developer shall, without delay, make the copies of these receipts and certifications available for inspection by the Secretary or the developer shall forward to the Secretary any of the receipts and certifications, or copies thereof, as the Secretary may specify.

(c) If the transaction takes place through the mails, the cost figures shall be entered and the person most active in dealing with the prospective purchaser shall sign the certification prior to mailing the Property Report to the purchaser. Otherwise, the certification shall be executed in the presence of the purchaser.

(d) The Data of Report appearing on the receipt shall be the same as that appearing on the cover sheet of the Property Report.

(e) Notification of cancellation by mail shall be considered given at the time post-marked.

§ 1710.200 Instructions for Statement of Record, Additional Information and Documentation.

The Additional Information and Documentation portion of the Statement of Record shall contain the statements and documents required in §§ 1710.208 through 1710.219. Each section number and its associated heading and each paragraph letter or number and their associated subheadings or captions must appear in this portion. Following each heading, subheading, or caption printed in this portion, the registrant shall insert an appropriate response. If a heading, subheading, or caption does not apply to the subdivision, it shall be followed by the words "not applicable". Immediately after the page(s) on which the section number and answers for that Section appear, insert the information or documents which support that section. In addition to the statements and documentation expressly required there shall be added any further material, information, documentation and certifications as may be necessary in the public interest and for the protection of purchasers or to cause the statements made to be not misleading in the light of the circumstances under which they are made.

§ 1710.208 General Information.

(a) *Administrative Information.* (1) State whether the material represents an initial Statement of Record or a consolidated Statement of Record. If it is a consolidated Statement of Record, identify the original OILSR number assigned to the initial Statement of Record. State whether subsequent Statements of Record will be submitted for additional lots in the subdivision.

(2) Has the developer submitted a request for an exemption for the subdivision?

(3) List the states in which registration has been made by the developer for the sale of lots in the subdivision.

(4) If any State listed in paragraph (a)(3) of this section has not permitted a registration to become effective or has suspended the registration or prohibited sales, name the State involved and give the reasons cited by the State for their action.

(5) State whether the developer has made, or intends to make, a filing with the U.S. Securities and Exchange Commission (SEC) which is related in any way to the subdivision. If a filing has been made with the SEC, give the SEC identification number; identify the prospectus by name; date of filing and state the page number of the prospectus upon which specific reference to the subdivision is made. Any disciplinary action taken against the developer by the SEC should be disclosed in §§ 1710.116 and 1710.216.

(b) *Subdivision Information.* (1) If this is a consolidated Statement of Record, state the number of lots being added, the number of lots in prior Statements of Record and the new total number of lots. The Secretary must be able to reconcile the numbers stated here with the title evidence; the plat maps and the disclosure in § 1710.108.

(2) State the number of acres represented by the lots in this Statement of Record. If this is a consolidated Statement of Record, state the number of acres being added, the number of acres in prior Statements of Record and the new total number of acres. State the total acreage owned in the subdivision, the number of acres under option or similar arrangement for acquisition of title to the land and the total acreage to be offered pursuant to the same common promotional plan.

(3) State whether any lots have been sold in this subdivision since April 28, 1969 and prior to registration with this Office. If they were sold pursuant to an exemption, identify the exemption provision and state whether an advisory opinion, exemption order or exemption determination was obtained with respect to those lots sales. Give the OILSR number assigned to the exemption, if any.

(c) *Developer Information.* (1) State the name, address, Internal Revenue Service number and telephone number of the owner of the land. If the owner is other than an individual, name the type of legal entity and list the interest, and extent thereof, of each principal. Identify the officers and directors.

(2) If the developer is not the owner of the land, state the developer's name, address, Internal Revenue Service number and telephone number. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. Identify the officers and directors.

(3) If you wish to appoint an authorized agent, state the agent's name, address and telephone number and scope of responsibility. This shall be the party designated by the developer to receive correspondence, service of process and notice of any action taken by OILSR. In all Statements of Record, including those for foreign subdivisions, the authorized agent shall be a resident of the United States. A change of the authorized agent will require an appropriate amendment.

(4) State whether the owner of the land, the developer, its parent, subsidiaries or any of the principals, officers or directors of any of them are directly or indirectly involved in any other subdivision. If so, identify the subdivision by name, location, and OILSR number, if any.

(5) State whether the owner or developer is a subsidiary corporation. If either the owner or developer is a subsidiary corporation or if any of the principals of the owner or developer are corporate entities, name the parent and/or corporate entity and state the principals of each to the ultimate parent entity.

(d) *Documentation.* (1) Submit a copy of the property report, subdivision report, offering statement or similar document filed with the state or states with which the subdivision has been registered.

(2) Submit *two* copies of a general plan of the subdivision. This general plan shall consist of a map, prepared to scale, and it shall identify the various proposed sections or units within the subdivision; the lot numbers within those sections or units; the existing or proposed roads or streets and the location of the existing or proposed

recreational and/or common facilities. In an initial filing, this map shall, at least, reflect the lots in the offering, and the area included in the Statement of Record. In a consolidated Statement of Record, it shall reflect the lots and area being added as well as the lots and areas previously registered. If a map of the entire subdivision is submitted with the initial Statement of Record, and if no substantial changes are made when material for a consolidated Statement of Record is submitted, the original map may be incorporated by reference. Lot dimensions need not be shown on individual lots but a representative lot, with dimensions, shall be displayed on the map.

(3) (i) If the developer is a corporation, submit a copy of the articles of incorporation, with all amendments; a copy of the certificate of incorporation or a certificate of a corporation in good standing and, if the subdivision is located in a state other than the one in which the original certificate of corporation was issued, a certificate of registration as a foreign corporation with the state where the subdivision is located.

(ii) If the developer is a partnership, unincorporated association, joint stock company, joint venture or other form of organization, submit a copy of the articles of partnership or association and all other documents relating to its organization.

(iii) If the developer is not the owner of the land, submit copies of the above documents for the owner.

§ 1710.209 Title and Land Use.

(a) *General Information.* (1) State whether the developer has reserved the right to exchange or withdraw lots after a purchaser has signed a sales contract (e.g., for prior sales, failure to pass credit check). If yes, indicate this authority and make reference to the applicable paragraph in the sales contract or other document.

(2) State whether there is a provision giving purchasers an option to exchange lots. If yes, indicate this and make reference to the applicable paragraph in the sales contract or other document.

(3) State whether the developer knows of any instruments not of record which, if recorded, would affect title to the subdivision. If yes, copies of these instruments shall be submitted, except that copies of unrecorded contracts for sales of lots in the subdivision need not be submitted.

(4) Identify the Federal, state and local agencies or similar organizations which have the authority to regulate or issue permits, approvals or licenses which may have a material effect on the developer's plans with respect to the proposed division of the land, facilities or proposed facilities, common areas, improvements or proposed improvements to the subdivision. State what permits, approvals or licenses are required by these agencies and whether they have been obtained by the developer. State the facility affected by each required permit; approval or license. If no agency regulates the division of the land or issues any permits, approvals or licenses with respect to improvements, so state. Your answer shall specifically address itself to the areas of environmental protection agencies, environmental impact statements, Corps of Engineers permits to construct, dredge, bulkhead, affect the flow of, or otherwise change or affect bodies of water within or around the subdivision. Also, include any permits or licenses issued or required by water resources boards or pollution control boards, river basin commissions, conservation agencies, or other similar organizations or entities.

(5) State whether it is unlawful to sell lots prior to the final approval and recording of a plat map in the jurisdiction where the subdivision is located.

(b) *Title Evidence.* Submit title evidence which specifically states the status of the legal and equitable title to the land comprising the lots covered by this Statement of Record and the land upon which are located any common areas or facilities disclosed in the Property Report pursuant to § 1710.111 (a) and (b) and § 1710.114. Title evidence need not be submitted for those common areas and facilities disclosed in these sections which are not owned by the developer.

This requirement may be met only by title evidence in one of the below listed forms which shall be dated no earlier than 20 business days preceding the date of the filing of the Statement of Record with the Secretary. If the title evidence is dated earlier than 20 business days prior to the date of filing, the developer may submit a separate attorney's opinion of title covering the period from the date of title evidence to a date no earlier than 20 business days preceding the date of the filing.

The developer shall amend the title evidence to reflect the change in the status of title of any previously registered, reacquired lots unless the status of title of such lots is at least as marketable as when it was first offered for sale by the developer as a registered lot.

(c) *Forms of Acceptable Title Evidence.* (1) An original or copy of a signed owner's policy of title insurance, a mortagee's policy of title insurance, a certificate of title, or similar instrument issued by a title company duly authorized by law to issue such instruments in the state in which the subdivision is located. Title binders, title commitments or title company insurance policies, certificates of title or similar instruments which, respectively, limit insurance and negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner, are not acceptable if submitted to fulfill this requirement; or,

(2) A legal opinion stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the state in which the property is located. Title opinions, which limit negligence liability to amounts less than the market value of the subject land at the time of its acquisition by the subdivision owner, are not acceptable if submitted to fulfill this requirement. Such title opinion may be based on a Torrens land registration system certificate of title, or similar instrument, if the attorney's opinion in conjunction with such certificate meets all the general title evidence requirements in this section as well as the indicated special requirements specifically applicable to title evidence based on such certificates.

(d) *Title Searches.* The required evidence of the status of title shall be based on a search of all public records which may contain documents affecting title to the land or the developer's ability to deliver marketable title. The search must cover a period which is required or generally considered adequate for insuring marketability of title in the jurisdiction in which the subdivision is located. Such search shall include an examination of at least the following documents:

(1) The records of the recorder of deeds or similar authority;

(2) U.S. Internal Revenue Liens;

(3) The records of the circuit, probate, or other courts including Federal courts and bankruptcy or reorganization proceedings which have jurisdiction to affect the title to the land;

(4) The tax records;

(5) Financing statements filed pursuant to the Uniform Commercial Code or similar law. If it is held that the financing statements do not affect the title of the land, include a statement of the legal authority for that opinion.

This search may be accomplished through the use of a title insurance company title plant, the information in which is based on current searches of the appropriate and necessary documents, including as a minimum those listed immediately above. For any attorney's title opinion based on Torrens certificates of title, the title search need only go beyond the original time of registration of the certificate of title for those types of encumbrances which were not conclusively settled by the proceedings at the time of such registration. In such cases, the required statement shall clearly reflect the documents and periods searched.

(e) *Items to be included in the Title Evidence.* The title evidence shall include the below indicated information, instruments and statements which shall be filed in accordance with the following instructions and which shall not be repeated or duplicated elsewhere in the Statement of Record. These requirements are applicable to all forms of acceptable title evidence.

(1) A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. This legal description shall be adequate for conveying land in the jurisdiction in which the subdivision is located. If this legal description is based on a recorded plat, the lot numbers, recording place, book name, book number, and page number shall be stated in the description. If this legal description is given by metes and bounds, the title evidence shall include or be accompanied by a certified statement of the preparer of the title evidence, a licensed attorney, or an engineer or surveyor, indicating that all subject lots, common areas, and common facilities are encompassed within the metes and bounds description in the evidence. If at any time after the submission of the legal description required above, the description of the subject land is changed or found to be in error, a correcting amendment shall be made to the Statement of Record.

(2) The name of the person(s) or other legal entity(ies) holding fee title to the property described.

(3) The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

(4) A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies) referred to in subparagraphs (2) or (3) of this paragraph, including any encumbrances, easements, covenants, conditions, reservations, limitations or restrictions of record. (Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which they are based). When an objection or exception to title affects less than all of the property covered by this Statement of Record, the title evidence shall specifically note what portion of the property is so affected.

(5) Copies of all instruments in the public records specifically referred to in subparagraph (4) of this paragraph. (Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstractor qualified and authorized by law to prepare and certify such abstracts and if the abstracts contain a material portion of the recorded instruments sufficient to determine the nature and effect of such instruments.) Also include copies of any release provisions, relating to encumbrances on the property described, which are not included in the documents otherwise required by this section.

(6) If an attorney's title opinion has been submitted pursuant to this section which has been based on a Torrens land registration certificate of title, submit a copy of such certificate.

(f) *Supplemental Title Information.* (1) If there is a holder of an ownership interest in the land other than the developer, submit a copy of any documentation which evidences the developers' authorization to develop and/or sell the land.

(2) Submit copies of any trust deeds, deeds in trust, escrow agreements or other instruments which purport to protect the purchaser in the event of default or bankruptcy by the developer on any instrument or instruments which create a blanket encumbrance upon the property unless they have been previously provided as part of "title evidence" submitted pursuant to paragraph (e) of this section.

(3) Submit copies of all forms of contracts or agreements and notes to be used in selling or leasing lots. The contracts or agreements, including promissory notes, must contain the following language in boldface type (which must be distinguished from the type used for the rest of the contract) on the face or signature page above all signatures:

"You have the option to void your contract or agreement by notice to the seller if you did not receive a Property Report prepared pursuant to the rules and regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, in advance of, or at the time of your signing the contract or agreement. If you received the Property Report less than 48 hours prior to signing the contract or agreement, you have the right to revoke the contract or agreement by notice to the seller until midnight of the third business day following the consummation of the transaction. A business day is any calendar day except Sunday and the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day , Labor Day, Columbus Day, Veteran's Day, Thanksgiving, and Christmas."

The above revocation and voidability provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(4) Submit copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

(g) *Plat Maps, Environmental Studies and Restrictions*—(1) Plat Maps. (i) In those jurisdictions where it is unlawful to sell lots prior to final approval and recording of the plat, and in those cases where a plat has been recorded, submit a copy of the recorded plat. This plat should be an exact copy of the recorded document. It should reflect the signatures of the approving authorities and bear a stamp or notation by the recorder of deeds, or similarly constituted officer, as to the recording data.

(ii) If the plat has not been approved by the local authorities nor recorded, and if it is not unlawful to sell lots prior to final approval and recording, submit a map which has been prepared to scale and which shows the proposed division of the land, the lot dimensions and their relation to proposed or existing streets and roads. The map shall contain sufficient engineering data to enable a surveyor to locate the lots.

(iii) Whether recorded or unrecorded, the plat or map should show:

(A) The dimensions of each lot, stated in the standard unit of measure acceptable for such purposes in the political subdivison where the land is located.

(B) A clear delineation of each of the lots and any common areas or facilities.

(C) Any encroachments or rights-of-way on, over, or under the land, or a notation of these items together with the identity of the lots affected.

(D) The courses, distances and monuments, natural or otherwise, of the land's boundaries; contiguous boundaries and identification or ownership of adjoining land and names of abutting streets, ways, etc.

(E) The location of the section or unit encompassing the lots in relationship to

the larger tract, or tracts, in the subdivision.

(F) The delineation of any flood plains or flood control easments affecting any of the lots.

(iv) The plat, or map shall be prepared by a licensed surveyor or engineer.

(v) If all lots on each page of the plat are not included in the Statement of Record with which the plat or map is submitted, then the lots which are to be included in the Statement of Record shall be identified on the plat or map; a legend describing the method of identification shall be entered on the face of the plat or map and the number of lots so identified entered in the lower right hand corner of the plat map. The Secretary must be able to reconcile the totals of these numbers with the information given in §§ 1710.108 and 1710.208 of the Statement of Record and the title evidence.

(2) *Environmental Impact Study.* If the developer is aware of any environmental impact study which considers the effect of the subdivision on the environment, submit a summary of that study.

(3) *Restrictions or Covenants.* Submit a copy of any recorded or proposed restrictions or covenants for the subdivision if not submitted elsewhere in this Statement of Record.

A copy of these restrictions or covenants shall be delivered to a prospective purchaser upon request. A supply shall be maintained at whatever place or places as will be necessary to allow immediate delivery upon request.

§ 1710.210 Roads.

(a) State the estimated cost to the developer of the proposed road system.

(b) If the developer is to complete any roads providing access to the subdivision, submit copies of any bonds or escrow agreements which have been posted to guarantee completion thereof.

(c) Submit copies of any bonds or escrow agreements which have been posted to assure completion of the roads within the subdivision.

(d) If the interior roads are to be maintained by a public authority, submit a copy of a letter from that authority which states that the roads have been, or the conditions upon which they will be, accepted for maintenance and when.

§ 1710.211 Utilities.

(a) *Water.* (1) State the estimated cost to the developer of the central water system.

(2) If water is to be supplied by a central system, furnish a letter from the supplier that it will supply the water. If the system is operated by a governmental division or by an entity whose operations are regulated by a governmental agency but which is not affiliated with or under the control of the developer, the letter shall include a statement that the supply of water will be sufficient to serve the anticipated population of the subdivision or how many homes or connections it can and will serve and that the water is tested at regular intervals and has been found to meet all standards for a public water supply.

(3) If the water is to be supplied by individual wells, by an entity which is not regulated by a governmental agency, by the developer or by an entity which is affiliated with or controlled by the developer, submit a copy of any engineers' reports or hydrological surveys which indicate there is a sufficient supply of water to serve the anticipated population of the subdivision.

(4) If the supplier of water is not in one of the categories in paragraph (a)(2) of this section, submit a copy of a letter or report from a cognizant health officer, or from a private laboratory licensed by the state to perform tests and issue reports on water, to the effect that the water was found to meet all drinking water standards required by the state for a public water system.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system, including any phases which are to be constructed in the future, has been posted by the developer or an entity not regulated by a government agency, furnish a copy of the document.

(6) Furnish a copy of any permits which have been obtained by the developer or any entity affiliated with or under the control of the developer in connection with the construction and operation of the central system. If a permit is required to install individual wells, submit a letter from the proper authority which states the requirements for obtaining the permit and that there is no objection to the use of individual wells in the subdivision.

(7) Furnish a copy of any membership agreement or contract which allows or requires lot owners to use the central water system. If this document is furnished elsewhere in the Statement of Record, reference to it may be made here.

(b) *Sewer.* (1) State the estimated cost to the developer of the central sewer system.

(2) If sewage disposal is to be by individual on-site systems, furnish a letter from the local health authorities giving general approval to the use of these systems in the subdivision or giving specific approval for each and every lot.

(3) If sewage disposal is to be through a central system which is owned and operated by a governmental division, or by an entity whose operations are regulated by a governmental agency but which is not affiliated with, or under the control of, the developer, furnish a letter from the entity that it will provide this service and that its treatment facilities have the capacity to serve the anticipated population of the subdivision or how many homes or connections it can and will serve.

(4) Furnish a copy of any permits obtained by the developer or any entity affiliated with or under the control of the developer, for the construction and operation of the central sewer system or construction and use of any other method of sewage disposal contemplated for the subdivision except those to be obtained by individual lot owners at a later date.

(5) If any bond, escrow agreement or other financial assurance of the completion of the central system or other system for which the developer is responsible, and any future expansion, has been posted, furnish a copy of the document.

(6) Furnish a copy of any membership agreement of contract which allows, or requires, the lot owners to use the central system. If this document is furnished elsewhere in the Statement of Record, it may be incorporated here by reference.

(c) *Electricity.* Give an estimate of the total construction cost to be expended by the developer and submit any instrument providing financial assurance of completion of the facilities which has been posted by the developer.

(d) *Telephone.* Give an estimate of the total construction cost to be expended by the developer and submit a copy of any instrument providing financial assurance of the completion of the facilities which has been posted by the developer.

§ 1710.212 Financial information.

(a) *Financing of improvements.* Describe the financing plan that is to be used in financing on-site or off-site improvements proposed in the Statement of Record.

(b) Complete the following format:

1. Estimated date for full completion of amenities:.....
2. Projected date for complete sell out of subdivision:.....
3. Cost and expense recap for lots included in this Statement of Record:.....

(i) Land acquisition cost or current fair market value of land.....
(ii) Development and improvement costs (include the estimated cost of such items as roads, utilities, and amenities which the developer will incur).....
(iii) Estimated Marketing and Advertising costs.....
(iv) Estimated sales commission.....
(v) Interest (include cost in financing the land purchase, improvements, or other borrowings).....
(vi) Estimated other expenses (include general costs, administrative costs, profit, etc.).....
(vii) Total.....
4. Total land sales revenue:.....
(i) Estimated total land sales income.....
(ii) Estimated other income.....
(iii) Total income.....

(c) *Financial statements.* (1) Submit a copy of the developer's financial statements for the last full fiscal year. These statements shall be prepared in accordance with generally accepted accounting principles as prescribed by the Financial Accounting Standards Board and generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, and shall be audited by an independent licensed public accountant. They shall include a balance sheet, a statement of profit and loss, a statement of changes in financial condition and a certified opinion by the accountant. The statements shall be no more than six months old on the date the Statement of Record is submitted.

(2) If the audited statements are more than six months old at the date of submission of the Statement of Record, or if the last full fiscal year has ended within the last 90 days and audited Statements are not yet available, the developer may submit a copy of the audited statements for the previous full fiscal year and supplement them with unaudited, interim statements so that the financial information is no more than six months old on the date that the Statement of Record is submitted. The interim statements may be prepared by company personnel but must contain a balance sheet, a statement of profit and loss and a statement of changes in financial condition and be prepared in accordance with generally accepted accounting principles.

(d) *Annual Report.* (1) Each year after the initial effective date, the developer shall submit a copy of its latest financial statements. These statements must meet the standards set out in § 1710.212(c)(1), unless the developer has qualified for an exception under § 1710.212(e), and must be submitted within 120 days after the close of the developer's fiscal year.

(2) If a developer has submitted its latest statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission of the statements to comply with this section is not necessary.

(3) If the developer no longer has an active sales program on the date this report is due, the information set forth in § 1710.310(a)(5)(ii) may be furnished in lieu of this report.

(e) *Exceptions.* (1) If the developer does not have audited financial statements and the criteria in one of the following exceptions are met, statements need not be audited and certified but must meet all of the other requirements set forth in paragraphs (c)(1) and (c)(2) of this section.

(2) For the purposes of these exceptions, these definitions shall apply:

(i) "Deed" shall mean a warranty deed, or its equivalent, which conveys title free and clear of liens and encumbrances.

(ii) "Assurance of Title Agreement" shall mean a legal arrangement whereby the purchaser is guaranteed a deed upon payment of no more than the full purchase price of the lot (e.g. subdivision trust). In addition to a copy of any Assurance of Title Agreement, the Secretary may require additional documentation such as an attorney's opinion letter to assure that the purchaser's title is fully protected.

(iii) "Date of contract shall" mean the date on which the contract or agreement is signed by the purchaser.

(iv) "Escrow or trust account as to down payments and deposits" shall mean an account, established in accordance with local real estate laws or regulations, which assures the return to the purchaser of any monies paid in the event title is not delivered to the purchaser in accordance with the terms of the contract.

(3) The exceptions are:

(i) The aggregate sales prices of all lots offered pursuant to a common promotional plan equals $500,000.00 or less, or;

(ii) The aggregate sales prices of all lots offered pursuant to a common promotional plan equals $500,000.00 but equals less than $1,500,000.00 and the sales contract provides for delivery of a deed within 120 days of the date of the contract or the developer has filed an Assurance of Title Agreement with OILSR with any down payments or deposits being held in an escrow account, or:

(iii) All facilities, utilities and amenities proposed by the developer in the Property Report or sales contract have been completed so that the lots included in the Statement of Record are immediately usable for the purpose for which they are sold and the sales contract provides for delivery of a deed within 120 days of the date of the contract or the developer has filed an Assurance of Title Agreement with OILSR with any down payments or deposits being held in an escrow or trust account, or;

(iv) All of the following conditions are met:

(A) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities proposed by the developer in either the Property Report or sales contract so that all lots included in the Statement of Record will be usable for the purpose for which they are sold by the dates set out in the Property Report or contract, and;

(B) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual promissory notes or bonds are not acceptable), irrevocable letters of credit or the establishment of escrow or trust accounts, which assure the completion of all facilities, utilities and amenities proposed by the developer in the Property Report or contract, and;

(C) The sales contract provides for the delivery of a deed within 120 days of the date of the contract which conveys title free of any mortgage or lien, and;

(D) Any deposits or down payments are held in an escrow or trust account.

[The term "conveys title free of any mortgage or lien" in these exceptions is not intended to prohibit the taking of an instrument as security for the lot purchase price after title is conveyed.]

(f) *Newly formed entity.* If the developer is newly formed and has not had any significant operating experience, an audited or unaudited balance sheet and statement of receipts and disbursements of funds may be submitted.

(g) *Use of parent company statements.* If the developer is a subsidiary company and does not have audited financial statements, the Secretary may permit the use of the audited and certified statements of the parent company: *Provided,* That those statements are accompanied by an unconditional guaranty that the parent shall perform and fulfill the obligations of the subsidiary. If this procedure is adopted, the developer shall submit the following:

(1) The audited and certified financial statements of the parent company, together with interim statements if necessary, which comply with § 1710.212(c).

(2) A properly executed guaranty in a form acceptable to the Secretary.

The disclosure information required in § 1710.112 shall be appropriately amended to reference the parent company and not the developer and must include a statement to the effect that the developer's parent company (insert name) has entered into an unconditional guaranty to perform and fulfill the obligations of the developer.

(h) *Opinions.* If the accountant qualifies or disclaims his opinion, the Secretary may accept the statements and require such additional disclosure as the Secretary deems necessary in the public interest or for the protection of purchasers.

(i) *Copies for prospective purchasers.* Copies of the financial statements filed with the Statement of Record shall be made available to prospective purchasers upon request. A supply of the latest submitted statements shall be maintained at whatever place, or places, as is necessary to allow immediate delivery upon request by a prospective purchaser. These statements shall contain financial information only and shall not include any promotional material such as that usually set forth in annual reports.

(j) *Change from audited to unaudited statements.* (1) Developers who file audited statements must continue with audited statements throughout the duration of the registration unless, at a later date, the developer submits amendments which demonstrate to the satisfaction of the Secretary that:

(i) The aggregate sales prices of the lots yet to be sold in the subdivision has been reduced to less than $1,500,000.00, and that it will not exceed this amount through further additions to the subdivison, or through the reacquisition of lots already sold, and;

(ii) The sales contract provides for delivery of a deed within 120 days of the date of the contract which conveys title free and clear of any mortgage or lien or the developer files an Assurance of Title Agreement with OILSR, and;

(iii) Any down payments or deposits are held in an escrow or trust account, or;

(iv) The developer then qualifies for exception (e)(3)(iii) or (e)(3)(iv) above.

(2) The Secretary may allow a developer, who has made sales prior to registration, to submit unaudited statements under the provisions of paragraph (j)(1)(i) of this section. The developer must demonstrate to the satisfaction of the Secretary that the acceptance of unaudited statements would not be a detriment to the public interest or to the protection of purchasers.

§ 1710.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in § 1710.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

(b) Submit a copy of any bond or escrow arrangements to assure completion of the recreational facilities disclosed in § 1710.114 which are not structurally complete.

(c) Submit a copy of the lease for any leased recreational facility.

§ 1710.215 Subdivision characteristics and climate.

(a) Submit *two* copies of a current geological survey topographic map, or maps, of the largest scale available from the United States Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Photo copies made by the developer are not acceptable. Do not shade the areas on the maps which have been outlined.

(b) If drainage facilities are proposed but not yet completed, submit a synopsis of the developer's proposed plans which includes a description of the system of collecting surface waters; a description of the steps to be taken to control erosion and sedimentation and the estimated cost of the drainage facilities.

(c) Submit copies of any bonds, escrow or trust accounts or other financial assurance of completion of the drainage facilities.

(d) State whether the jurisdiction in which the subdivision is located has a system for rating the land for fire hazards.

§ 1710.216 Additional information.

(a) *Property Owners' Association.* (1) If the association has been formed as a legal entity, submit a copy of the articles of association, bylaws or similar documents, and a copy of the charter or certificate of incorporation.

(2) If the developer exercises any control over the association, state whether any contracts have been executed between the association and the developer or any affiliate or principal of the developer. If there have been, briefly summarize the terms of the contracts, their purpose, their duration and the method and rate of payment required by the contract. State whether the association may modify or terminate the contracts after the owners assume control of the association.

(3) State whether there is any agreement which would require the association to reimburse the developer, its affiliates or successors for any attorney's fees or costs arising from an action brought against them by the association or individual property owners regardless of the outcome of the action.

(4) If the answer to paragraph (a)(2) or (a)(3) of this section is in the affirmative, disclosure may be required in § 1710.116(a) at the discretion of the Secretary.

(5) Submit a copy of any membership agreement or similar document.

(b) *Price range, type of sales and marketing.* (1) State the price range of lots in the subdivision.

(2) State the type of sales to be made, i.e., contract for deed, cash, deed with security instrument, etc.

(3) Describe the methods of advertising and marketing to be used for the subdivision. The description should include, but need not be limited to, information on such matters as to:

(i) Whether the developer will employ his own sales force or will contract with an outside group;

(ii) Whether wide area telephone solicitation will be employed;

(iii) Whether presentations will be made away from the immediate vicinity of the subdivision and/or if prospective purchasers will be furnished transportation from distant cities to the subdivision;

(iv) Whether mass mailing techniques will be used and gifts offered to those who respond.

(4) Submit a copy of any advertising or promotional material that is, or has been, used for the subdivision that:

(i) Mentions or refers to recreational facilities which are not disclosed in § 1710.114, or;

(ii) Promotes the sale of lots based on the investment potential or expected profits, or;

(iii) Contains information which is in conflict with that disclosed in this Statement of Record.

Amendments to reflect changes in advertising or promotional material need be filed only when there is a material change related to one of the above factors. Depending upon the content of the material submitted, the Secretary may require additional warnings in the Property Report portion.

(c) *Violations and Litigation.* (1) Submit a copy of the complaint(s), the answer(s) and the decision(s) for any litigation listed in § 1710.116(c).

(2) If it is indicated in § 1710.116(c) that the developer or any of the parties involved in the subdivision are, or have been, the subject of any bankruptcy proceedings, furnish a copy of the schedules of liabilities and assets (or a recap of those schedules); the petition number; the date of the filing of the petition; names and addresses of the petitioners, trustee and counsel; the name and location of the court where the proceedings took place and the status or disposition of the petition.

Explain, briefly, the cause of the action.

(3) Furnish a copy of any orders issued in connection with any violations listed in § 1710.116(c).

(d) *Resale or Exchange Program.* (1) If it is stated in § 1710.116(d)(3) that there is an exchange program which provides sufficient lots to satisfy all requests for exchange, describe the method used to determine the number of lots required; state whether these lots have been reserved or set aside; whether additional lots will be provided if the lots available for exchange are exhausted and the source of any additional lots.

(e) *Unusual Situations.*—(1) *Foreign Subdivisions.* If the subdivision is located outside the several States, the District of Columbia, the Commonwealth of Puerto Rico or the territories or possession of the United States, the Statement of Record shall be submitted in the English language and all supporting documents, including copies of any laws which restrict the ownership of land by aliens, shall be submitted in their original language and shall be accompanied by a translation into English.

§ 1710.219 Affirmation.

The following affirmation shall be executed by the senior executive officer or a duly authorized agent:

I hereby affirm that I am the Senior Executive Officer of the developer of the lots herein described or will be the Senior Executive Officer of the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by the Senior Executive Officer of such developer to complete this statement (if agent, submit written authorization to act as agent); and,

That the statements contained in this Statement of Record and any supplement hereto, together with any documents submitted herein, are full, true, complete, and correct; and,

That the developer is bound to carry out the promises and obligations set forth in this Statement of Record and Property Report or that I have clearly delineated the proposals for which the developer is not bound and stated who is or will be responsible, if anyone; and

That the fees accompanying this submission are in the amount required by the rules and regulations of the Office of Interstate Land Sales Registration.

(Date) (Signature)—

(Corporate seal if applicable)

(Title)

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (82 Stat. 598, 15 U.S.C. 1717) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a Statement of Record filed under, or in a Property Report issued pursuant to this title, makes any untrue statement of a material fact * * *, shall upon conviction be fined not more than $5,000.00 or imprisioned not more than 5 years, or both."

§ 1710.310 Required notice as to activity.

(a) Where the developer has submitted no material other than annual financial statements to the Secretary in connection with a Statement of Record, made effective pursuant to §§ 1710.21, 1710.52, 1710.54 or 1710.56, during any twelve month period following the last effective date of the filing issued by the Secretary, a notice shall be submitted by the developer within 30 days of the annual anniversary for that last effective date, and on each successive anniversary where no other material has been submitted during each prior year, which contains the following information:

(1) Subdivision name and address.

(2) Developer's name, address and telephone number.

(3) OILSR number.

(4) Most recent effective date issued by the Secretary.

(5) Either:

(i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record, or;

(ii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision; the reason it is no longer selling (e.g., all lots sold to the public or the remaining lots in the subdivision have been sold to another developer along with the new developer's name, address, telephone number and the date of sale). A request may be made that the Statement of Record for the subject subdivision be voluntarily suspended. That request should be submitted in duplicate and the voluntary suspension would become effective upon the counter-signature of the Secretary, or an authorized designee, with the duplicate being mailed to the developer.

(6) The notice shall be dated and shall be signed by the senior executive officer of the developer in a signature line above his typed name and title.

(b) This Notice, and any attachments thereto, shall be an integral part of the Statement of Record and failure to submit the notice when due shall be grounds for an action to suspend the effective Statement of Record.

(c) This notice may, at the option of the developer, be submitted at the same time the annual financial statements required by § 1710.212(d) are furnished, if the financial statements are submitted prior to the date on which this notice is due.

§ 1710.400 Application of regulations to existing and future filings.

(a) All initial exemption requests, filings, consolidations amendments and other actions made on the effective date of these regulations or thereafter shall be made pursuant to these regulations. However, the revised Part 1710 will otherwise not apply to the following:

(1) Examination of initial Statements of Record, consolidations or amendments filed prior to the effective date of these regulations. However, if the submission is made after publication and is in the new format, the developer may request that it be examined pursuant to the regulations as revised herein and the filing shall be examined and made effective on the basis of these regulations.

(2) Existing exemptions or exemptions in process prior to the effective date of these regulations which continue to meet the standards of the applicable exemption.

(3) All registrations having an effective date on or before December 31, 1973 for a period of one year after the effective date of these regulations. Developers in such cases shall file amendments which bring the registration into compliance with these regulations no later than one year from the effective date of these regulations.

(4) All registrations having an effective date on or after January 1, 1974 for a period of up to two years after the effective date of these regulations. Developers in such cases shall file amendments which bring the registration into compliance with these regulations by the end of the anniversary month of the last effective date issued by the Secretary for their filing in the second year after the effective date of the amended regulations. For example, a developer whose last effective date on an initial

filing or amendment was October 15, 1976 would be required to amend no later than October 31, 1980.

(5) An existing registration with fewer than 50 lots remaining in its registered offering at the time an amendment would be required. Any developer availing himself of this provision must submit an affidavit stating that there are fewer than 50 lots in the offering at the time and amendment would be required.

(b) Statements of Record amendments made to bring the registration into complicance with these regulations shall contain all of the changes necessary to bring the Property Report portion of the Statment of Record into compliance with the revised regulations. The Additional Information and Documentation portion of the Statement of Record need not be submitted unless there has been a material change in an applicable provision or documentation. However, required documentation not previously submitted must be included. Further, all amendments submitted for the purpose of updating under these regulations must include the financial information and documentation required by § 1710.212. The developer may, at its option, include the Addtional Information and Documentation portion including new documentation or copies of those documents previously submitted in order to expedite the examination process.

(c) Those developers now using the disclaimer statement required by § 1715.10(a) of the December 1, 1973 regulations may continue the use of that statement until their current stock of advertising material is exhausted or until six months from this effective date, whichever occurs first, at which time the use of the revised disclaimer statement in § 1715.10(a) shall begin.

PART 1715—ADVERTISING, SALES PRACTICES, POSTING OF NOTICES OF SUSPENSIONS

Subpart A—Advertising

§ 1715.5 [Amended]

1. In § 1715.5(a)(3), the citation to § 1710.25 is amended to read "§ 1710.52".

2. In § 1715.5(b), the words "he" and "him" are changed to the words "The Sercetary".

* * * * *

3. Section 1715.10 is revised to read as follows:

§ 1715.10 Advertising disclaimer; subdivisions registered and effective with HUD.

(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement of Record is on file with the Secretary. If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.

"Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property."

(b) If the advertising is of a classified type; is not more than five inches long and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.

(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than 5 lines long.

(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the federal disclaimer, may combine the wording of the disclaimers. All of the wording of the federal disclaimer must be included in the resulting combined disclaimer.

* * * * *

4. Section 1715.15(a) is amended; § 1715.15(m) is revised and § 1715.15(kk) is added to read as follows:

§ 1715.15 Advertising standards and guidelines.

(a) Is amended by adding the words, "if any" immediately after the words "property report" in the first sentence.

* * * * *

(m) Advertising which indicates the size of the lot offered shall state the amount of land available for use by the purchaser after all easements to which the lot may be subject, except for those for providing utilities to the lot, have been deducted. If the property is subject to easements which are unusual in size, then this fact shall also be noted. All maps, plats, representations or drawings shall show either the dimensions of the tract or the amount of acreage after deductions of easements.

* * * * *

(kk)(1) Pursuant to Section 804(c) of Title VIII of the Civil Rights Act of 1968, as amended, the Federal Fair Housing Law, except as exempted by Section 807, advertising shall not contain any indication of any preference, limitation or discrimination based on race, color, religion, sex or national origin.

(2) All advertising and sales presentations or representations shall be consistent with the Advertising Guidelines for Fair Housing published in 37 CFR 6700 (4–1–72) and 40 CFR 20079 (5–8–75).

(3) Whenever sales activity takes place which is subject to the Fair Housing Law, the HUD approved Fair Housing Poster must be displayed.

* * * * *

Subpart B—Sales Practices

§ 1715.25 Sales practices, when unlawful [Amended]

(5) In the first and second sentences of the first paragraph of § 1715.25, the words "his" are changed to "the developer's" and § 1715.25 (e) through (i) are added to read as follows:

* * * * *

(e) Use of any practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or any other document used by the developer as a sales inducement.

(f) To refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(g) To fail to deliver a Property Report in the same language as that in which an advertising campaign is conducted.

(1) If an advertising campaign is conducted in a language other than English, the Property Report delivered to those prospective purchasers who are the recipients of the advertising material shall be printed in the same language as that in which the advertising campaign is conducted.

(2) Sales documents such as the contract, agreement, promissory note and deed shall be printed in the same language as that of the advertising or have an accurate translation attached to them.

(h) The failure to maintain a sufficient supply of any restrictive convenants and financial statements and to deliver a copy to a purchaser upon request as required by §§ 1710.109(f), 1710.112(d), 1710.209(g) and 1710.212(i).

(i) The use, as a sales inducement, of any representation that any lot or parcel has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot or parcel does not already reflect the anticipated increase in value due to any promised facilities, amenities, etc.

The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

* * * * *

Issued at Washington, D.C., on March 21, 1979.

Geno C. Baroni,

Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[Docket No. R-79-537]

[FR Doc. 79-10552 Filed 4-9-79; 8:45 am]

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federal register

Tuesday
April 10, 1979

Part III

Department of Health, Education, and Welfare

Social Security Administration

Disclosure of Official Records and Information about Individuals

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 401]

Disclosure of Official Records and Information About Individuals

AGENCY: Social Security Administration, HEW.

ACTION: Proposed Rule.

SUMMARY: The proposed regulation describes the general principles the Social Security Administration will use to decide when to disclose official records and information about individuals and the limitations on those disclosures. This regulation implements the provisions of the Privacy Act of 1974, the Freedom of Information Act and its amendment by the Government in the Sunshine Act, the Tax Reform Act of 1976, and section 1106 of the Social Security Act.

DATE: Comments must be received on or before June 11, 1979.

ADDRESSES: Written comments may be submitted to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection and copying during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7455.

SUPPLEMENTARY INFORMATION:

Introduction

This proposal is the first major revision of Regulation No. 1 since 1955.

The Social Security Administration (SSA) has always followed a policy of strict confidentiality of its records. Since 1939, section 1106 of the Social Security Act has been the basic authority for that policy. Section 1106 prohibited the disclosure of information from SSA's records except as permitted in regulations issued by the Secretary of HEW. Section 1106 gave the Secretary of HEW the discretion to decide what these regulations should be.

The 1967 Freedom of Information Act (FOIA) directed the Government to make many of its records public, but permitted section 1106 to be recognized as a controlling statute. Therefore, the Secretary's regulations on confidentiality of information continued to provide authority for refusal to disclose even though the FOIA would otherwise require or permit it. As a result, SSA did not change its policies regarding disclosure of personal information. The Privacy Act of 1974 had little effect on SSA's disclosure policies since these policies were generally more strict than those required by the Privacy Act. A major change came, however, when Congress enacted the Government in the Sunshine Act, effective March 12, 1977.

The Government in the Sunshine Act, in effect, provided that the Secretary's discretion to deny disclosure requests under section 1106 of the Social Security Act would no longer be the basis for an exemption from disclosure under the FOIA.

The Department has published interim regulations on disclosure which complied with the provisions in the Government in the Sunshine Act. These regulations were published in the **Federal Register** on March 16, 1977 (42 FR 14705). They are quite general. In this Notice of Proposed Rulemaking, we are proposing rules on disclosure of personal information which describe the principles we will use to determine whether information may be disclosed to someone other than the individual to whom the information relates. Disclosure of non-personal information will continue to be governed by the FOIA rules in HEW regulations (45 CFR Part 5) and in SSA's regulation in Subpart E of Part 22 of this chapter.

Affected HEW Components

These regulations replace the interim regulations on disclosure for SSA. Included within SSA is the Office of Family Assistance (OFA) which is responsible for the Aid to Families with Dependent Children program. These regulations apply to information that OFA has. The rules on disclosure of personal information that States, local governments and others have under AFDC program are in 45 CFR 205.50.

The interim regulations will continue to apply to the Health Care Financing Administration's disclosure of Medicare (title XVIII) program information until HEW publishes new regulations regarding that information. We have modified the interim regulations to show that they will apply only to the Health Care Financing Administration after these regulations are published as final rules.

Basic Rules

When a Federal law requires that we disclose information for a particular reason, we will comply with that requirement (§ 401.205). For example, the law requires us to furnish information to the Parent Locator Service to help locate absent parents to enforce support obligations, and to the Immigration and Naturalization Service to carry out its duties regarding aliens.

When a Federal law prohibits us from disclosing certain information, we will comply with that prohibition (§ 401.210). For example, the Internal Revenue Code generally prohibits SSA from disclosing tax return information. This includes, for example, amounts of wages and contributions from employers in tax returns which have been filed with the Internal Revenue Service and which SSA receives to maintain individual earnings records.

When no law specifically requires or prohibits disclosure and the individual has not given consent to disclose, we propose to use the principles in the FOIA to decide whether or not to disclose information. We will use these principles whether or not the FOIA governs in a particular disclosure question. For example, the FOIA does not apply too requests from another Federal agency, but we will apply the same principles. We will then be able to use a uniform set of criteria for evaluating all disclosure questions. We have been doing this since the Government in the Sunshine Act became effective in March 1977.

Freedom of Information Act Rule

The basic intent of the FOIA is to require that records be made public, and even when withholding is permitted because one of the exemptions in the FOIA applies, records must be released (if not prohibited by another law) unless disclosure could result in demonstrable harm. The FOIA exemption which most often applies to SSA disclosure questions is whether the disclosure would result in a "clearly unwarranted invasion of personal privacy." We apply this test by considering—

(1) The sensitivity of the information to the individuals (e.g., whether individuals would suffer harm or embarrassment as a result of disclosure):

(2) The public interest in the disclosure;

(3) Individuals' rights and expectations to have their personal information kept confidential; and

(4) The public's interest in maintaining general standards of confidentiality of personal information.

For example, we believe that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes; we generally share information with those agencies. However, there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes; we generally do not share information for these purposes. We describe these rules in § 401.300 of the regulation.

Other General Rules

The other provisions of the regulation describe the principles we will use when the Privacy Act would permit disclosure. Generally, these rules apply to situations when, considering the nature and vast amount of SSA records, we believe the FOIA exemption of "clearly unwarranted invasion of personal privacy" permits a more limited disclosure policy than the Privacy Act allows.

(1) *Disclosures within HEW (§ 401.305).* The Privacy Act allows the sharing of information within an agency when needed to carry out its duties. HEW is an agency under both the Privacy Act and the FOIA. Therefore, to the extent disclosure is not prohibited by another law, we will share with other parts of HEW the information they need from our records to carry out their duties.

(2) *Routine use and compatibility (§ 401.310).* The Privacy Act allows an agency to disclose information routinely without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. We disclose information for "routine uses" where necessary to carry out SSA's programs. We also disclose information for use in other programs which have purposes similar to the purposes of SSA's programs.

Since the purpose of SSA's programs is basic income maintenance, we consider another program to be "compatible" when its purpose is cash income maintenance (e.g., veterans' benefits, railroad retirement annuities, worker's compensation, unemployment compensation, etc.), or noncash income maintenance (e.g., food stamps or rent subsidy). In addition, SSA still retains many responsibilities for the Medicare program now under the Health Care Financing Administration. Therefore, we consider health insurance or health services programs (e.g., Medicare, Medicaid, or the uniformed services health programs) to be compatible with SSA's programs.

We will also disclose information under appropriate circumstances for epidemiological and similar research. We consider this health-related activity to be a compatible purpose, since it may help prevent or lessen diseases, and thus may reduce the need for benefits under health maintenance programs.

(3) *Law enforcement (§ 401.315).* The Privacy Act permits disclosure needed to investigate or prosecute suspected fraud or abuse in a social security program or a similar program. In addition, the Privacy Act permits a broad range of disclosures for civil or criminal law enforcement activities. However, the Senate Government Operations Committee report on the Privacy Act (Sen. Rep. No. 93–1183, p. 73) states:

> In requiring that the agency rule on each request on a case-by-case basis, it is hoped that secret law enforcement access, that is disclosure without notification to the subject of the file, will only be permitted in the most exigent and essential circumstances.

We believe that disclosure in this area should be limited because, unless there are clearly defined situations for disclosure, it is difficult to determine what is in the public interest and what is a "clearly unwarranted invasion of personal privacy." Therefore, we believe that information should be released only—

(1) In cases of national security;

(2) In situations involving an imminent danger to human life (like hijacking, holding hostages, or acts of terrorism);

(3) In criminal investigations involving a violent felony (like murder or kidnapping) which have narrowed to specific suspects; and

(4) In situations involving criminal abuse of a social security program or similar program.

Disclosures and Safeguards for Research and Statistical Purposes

We propose to continue disclosing information for statistical and research purposes. We will disclose, if the following conditions apply—

(1) The agency requesting the information consents to use it only for research and statistical purposes, and will protect individuals from unreasonable and unwanted contacts;

(2) The activity is related to the social security program or other income or health maintenance programs, including epidemiological and similar research, and

(3) The requesting agency meets the rules we have for safeguarding its confidentiality. Research about the nation's income, work, social, age, and health patterns is clearly in the public interest. Since SSA itself uses data in its records for research and statistical purposes, we believe disclosure to other agencies for those purposes is permissible under the Privacy Act. Moreover, the safeguards we will insist upon should insure that the information is not further disclosed or used for nonresearch purposes. The new regulation would permit disclosure of data identifying specific individuals only in limited circumstances.

Court Orders

The Privacy Act allows disclosure to comply with any court order. However, as in the area of law enforcement, there are strong reasons for limiting the scope of these disclosures. Since participation in the social security programs is compulsory, individuals have little choice in the amount or kinds of information which we collect and keep about them. Court testimony generally becomes a matter of public record, so there can be no further protection of its confidentiality. Furthermore, the information requested is often more readily available from other sources or with the consent of the person concerned. These factors all argue for a restrictive position.

Accordingly, we disclose information in response to court orders if—

(1) Another section of the regulation would allow the release; or

(2) The Secretary of HEW is a party to the proceeding; or

(3) The information is necessary for due process in a criminal proceeding.

In other cases, we disclose information in response to the needs of the courts while trying to preserve the confidentiality of information.

Obtaining and Correcting Your Record

Sections 401.400 through 401.420 discuss how to request information from your record, and how to correct any information with which you do not agree.

The sensitive nature of medical information causes special problems in guaranteeing individuals the right to all information in an agency's files about them. Sometimes, a person's health might be harmed if he or she knew what was in a medical record.

The Privacy Act guarantees an individual the right to know what records an agency maintains about him or her, but also allows an agency to set up special procedures for giving an

individual access to medical records. The proposed regulation requires an individual to name a doctor or some other responsible representative whenever the individual wants to have access to a medical record. If we feel that the information might harm the individual, the report will be sent to the representative that the individual named.

We believe this procedure protects the individual from harm that might occur if he or she received the report directly, and also protects the individual's right under the Privacy Act to have access to information in an agency's files about him or her.

Appeals

Sections 401.500 through 401.510 discuss how to appeal any decision in which we refuse to correct a record, refuse to disclose information, or refuse to grant access to a record.

(Catalog of Federal Domestic Assistance Programs No. 13.802–13.805 and 13.807–13.814, Social Security Programs)

Dated: March 19, 1979.

Stanford G. Ross,
Commissioner of Social Security.

Approved: March 30, 1979.

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

20 CFR Part 401 is amended as follows:

1. Subpart A is transferred to 42 CFR Chapter IV and redesignated as new Part 401—Disclosure of Official Records and Information.

2. In § 401.1, paragraph (a) is revised to read as follows:

§ 401.1 Purpose and scope.

(a) The Regulations in this Part implement section 1106(a) of the Social Security Act as it applies to the Health Care Financing Administration. The rules apply to information obtained by officers or employees of the Health Care Financing Administration in the course of administering title XVIII of the Social Security Act, information obtained by Medicare intermediaries or carriers in the course of carrying out agreements under sections 1816 and 1842 of the Social Security Act, and any other information subject to section 1106(a) of the Social Security Act.

* * * * *

3. Subpart B is redesignated as Subpart F and the sections are renumbered accordingly.

4. The table of contents for Part 401 to 20 CFR reads as follows:

Subpart A—General Provisions

Sec.
401.100 Purposes of the regulation.
401.105 When the regulation applies.
401.110 Terms defined.
401.115 Situations not specified in this part.
401.120 Safeguards against unauthorized disclosure or use.
401.125 Fees.

Subpart B—How Laws Apply

401.200 General.
401.205 Disclosures required by law.
401.210 Disclosures prohibited by law.
401.215 Freedom of Information Act.
401.220 Other laws.

Subpart C—Individual Disclosures

401.300 General principles.
401.305 Within HEW.
401.310 Compatible purposes.
401.315 Law enforcement purposes.
401.320 Health or safety.
401.325 Statistical and research activities.
401.330 Congress.
401.335 General Accounting Office.
401.340 Courts.
401.345 Other specific recipients.
401.350 Deceased persons.

Subpart D—Obtaining and Correcting Your Records

401.400 General.
401.405 How to get your own record.
401.410 Medical information.
401.415 Records about two or more individuals.
401.420 How to correct your record.

Subpart E—Appeals

401.500 Which decisions are covered.
401.505 Appeal of refusal to correct a record.
401.510 Appeals after denial of disclosure or access.

Subpart F—Disclosure of Wage Information for Programs of Aid to Families With Dependent Children

401.600 Purpose and scope.
401.601 Definitions.
401.602 When information may be disclosed.
401.603 Information which is necessary.
401.604 Protection of confidentiality.

Authority: Secs. 205, 1102, and 1106 of the Social Security Act; 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, sec. 290, 66 Stat. 234; (42 U.S.C. 405, 1302, 1306; 8 U.S.C. 1360); sec. 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923, 5 U.S.C. 552a (Privacy Act); 5 U.S.C. 552 (Freedom of Information Act), as amended by Pub. L. 94–409, 90 Stat. 1241; 26 U.S.C. 6103, as amended by Pub. L. 94–455, 90 Stat. 1667 (Tax Reform Act of 1976).

5. New Subparts A through E are added to read as follows:

Subpart A—General Provisions

§ 401.100 Purposes of the regulation.

The Social Security Administration (SSA) generally provides information which individuals request about themselves. This regulation describes how individuals may get access to their own records. This regulation also describes the rules SSA uses to decide whether to disclose information about individuals without their consent. These rules are set out in Subparts A through E of this part. These rules comply with the Freedom of Information Act, the Privacy Act, section 1106 of the Social Security Act, and other applicable statutes. When required by the Privacy Act, SSA publishes notices of routine use for public information and comment. Procedures for requesting information are in §§ 422.428 and 422.436 of this chapter and 45 CFR Parts 5 and 5b.

§ 401.105 When the regulation applies.

(a) *Social security records.* This regulation applies only to information about an individual contained in SSA's records. It does not apply to—

(1) Information which is not about an individual; or

(2) Information about acts of SSA officials and employees or to SSA's personnel records.

The rules governing disclosure of information which is not about an individual are in 45 CFR Part 5 and Subpart E of Part 422 of this chapter. The rules governing disclosure of information about acts of SSA officials and employees or of personnel records are in HEW regulations (45 CFR Part 5). Information in the possession of a State or local agency administering a program of Aid to Families with Dependent Children is governed by the rules at 45 CFR 205.50. This regulation sets out the general guidelines which we follow in deciding whether to make disclosures. However, we must examine the facts of each case separately to decide if we should disclose the information or keep it confidential.

(b) *Health insurance records.* This regulation also applies to health insurance records which SSA maintains for the Health Care Financing Administration's programs under title XVIII of the Social Security Act.

(c) *Black lung benefit records.* This regulation also applies to records which SSA maintains for the administration of the Federal Coal Mine Health and Safety Act. However, this information is not covered by section 1106 of the Social Security Act.

§ 401.110 Terms defined.

"Access," as that term is used in the Privacy Act (5 U.S.C. 552a(d)), means the individual's right to review, copy, amend or correct records about that individual.

"Act" means the Social Security Act.

"Disclosure" means the availability or release of a record about an individual to another party.

"FOIA" means the Freedom of Information Act.

"HEW" means the Department of Health, Education, and Welfare.

"Individual" means a living natural person; this does not include corporations, partnerships, and unincorporated business or professional groups of two or more persons.

"Information about an individual" includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or other claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information, including psychological or psychiatric information or lay information used in a medical determination; and information about marital and family relationships and other personal relationships.

"Record" means any item, collection, or grouping of information about an individual that SSA maintains (e.g., employment history, medical history, education) and that contains his or her name, or an identifying number, symbol, or any other means by which an individual can be identified.

"Secretary" means the Secretary of Health, Education, and Welfare and any individual authorized to act for him or her in the administration of a social security program.

"Social Security Administration" (SSA) means (1) that principal operating component of the Department of Health, Education, and Welfare which has administrative responsibilities under titles I, II, IV—Part A, X, XI, XIV, XVI, and XVIII of the Act; and (2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

"Social security program" means any program or provision of law which SSA is responsible for administering, including the Freedom of Information Act and Privacy Act. This includes our responsibilities under Parts B and C of the Federal Coal Mine Health and Safety Act.

"System of records" means a group of records under our control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular.

"We" means the Social Security Administration.

§ 401.115 Situations not specified in this part.

If no provision in this regulation specifically allows SSA to disclose information, the Commissioner or his designee may disclose this information if not prohibited by Federal law.

§ 401.120 Safeguards against unauthorized disclosure or use.

The FOIA does not permit us to impose any restrictions on how information is used after we disclose it. However, the FOIA does permit us to withhold information if disclosure would result in a "clearly unwarranted invasion of personal privacy." In deciding whether this exemption applies in a given case, we must consider all the ways in which the recipient might use the information and how likely the recipient is to redisclose the information to other parties. Thus, before we disclose personal information we may consider such factors as—

(a) Whether only those individuals who have a need to know the information will obtain it;

(b) Whether appropriate measures to safeguard the information to avoid unwarranted use or misuse will be taken; and

(c) Whether we would be permitted to conduct on-site inspections to see whether the safeguards are being met.

§ 401.125 Fees.

We follow HEW regulations (45 CFR 5b.13) to determine the amount of fees, if any, to be charged for providing information under the Privacy Act.

Subpart B—How Laws Apply

§ 401.200 General.

This section describes how various laws control the disclosure or confidentiality of personal information which we keep. We must consider these laws in the following order.

(1) Some laws require us to disclose information (§ 401.205); some laws require us to withhold information (§ 401.210). These laws control whenever they apply.

(2) If no law of this type applies in a given case, then we must look to the FOIA. See § 401.215.

(3) When the FOIA principles don't require disclosure, we may disclose information if both the Privacy Act and the regulations implementing section 1106 of the Social Security Act permit the disclosure. See § 401.220.

§ 401.205 Disclosures required by law.

We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the Parent Locator Service and to States for the administration of the Aid to Families with Dependent Children program. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These include the Veterans Administration for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, and the Railroad Retirement Board for its benefit programs.

§ 401.210 Disclosures prohibited by law.

We do not disclose information when a law specifically prohibits it. The Internal Revenue Code generally prohibits us from disclosing tax return information which we receive to maintain individual earnings records. This includes, for example, amounts of wages and contributions from employers. Other laws restrict our disclosure of information about drug and alcohol abuse which we collect to determine eligibility for social security benefits.

§ 401.215 Freedom of Information Act.

The FOIA requires us to disclose any information in our records upon written request from the public, unless one of several exemptions in the FOIA applies. "The public" does not include Federal agencies, courts, or the Congress, but does include State agencies, individuals, corporations, and most other parties. The FOIA does not apply to requests that are not from "the public" (e.g., from a Federal agency) or when there is no written request. However, we apply FOIA principles to requests from these sources for disclosure of information (see § 401.300; also see §§ 401.330 and 401.335 for disclosures to Congress and the General Accounting Office (GAO)).

§ 401.220 Other laws.

When the FOIA does not apply, we may not disclose any personal information unless both the Privacy Act and section 1106 of the Social Security Act permit the disclosure. Sections 401.305 through 401.340 discuss how we apply the various provisions of the Privacy Act that permit disclosure. Section 1106 of the Social Security Act requires the Secretary of HEW to set out

in regulations what disclosures may be made; therefore, any disclosure permitted by this regulation is permitted by section 1106.

Subpart C—Individual Disclosures

§ 401.300 General principles.

(a) This subpart describes how we decide whether to disclose information when no law specifically requires disclosure nor prohibits it.

(b) We follow the FOIA principles even if there is no written request or the FOIA does not apply to a written request. For example, the FOIA does not apply when the request is from a Federal agency or a court. We follow these principles to insure uniform treatment in all instances.

(c) The FOIA principle which most often applies to SSA disclosure questions is whether the disclosure would result in a "clearly unwarranted invasion of personal privacy." To decide whether a disclosure would be a clearly unwarranted invasion of personal privacy we consider—

(1) The sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure);

(2) The public interest in the disclosure;

(3) The rights and expectations of individuals to have their personal information kept confidential; and

(4) The public's interest in maintaining general standards of confidentiality of personal information.

We feel that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes, so we generally share information with those agencies. However, there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commerical purposes; we generally do not share information for these purposes.

§ 401.305 Within HEW.

The Privacy Act allows an agency to share information inside the agency when necessary for the agency to carry out its duties. For purposes of this provision, HEW considers itself one "agency." SSA, as a part of HEW, discloses information to another HEW component when SSA determines that the other component has a legitimate need for the information and no other law prohibits it.

§ 401.310 Compatible purposes.

(a) *General.* The Privacy Act allows us to disclose information, without the consent of the individual, to any other party for "routine uses."

(b) *"Routine use."* This means the disclosure of a record outside HEW for a purpose which is "compatible" with the purpose for which the record was collected.

(c) *Determining compatibility.* We disclose information for "routine uses" where necessary to carry out SSA's programs. We also disclose information for use in other programs which have purposes similar to the purposes of SSA's programs. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Veterans Administration for its benefit program, to worker's compensation programs, to State general assistance programs, and to other governmental income maintenance programs; we also disclose for health-maintenance programs like Medicare and Medicaid, and in appropriate cases, for epidemiological and similar research. We publish notices of systems of records in the **Federal Register** which contain a list of all "routine use" disclosures.

§ 401.315 Law enforcement purposes.

(a) *General.* The Privacy Act allows us to disclose information for law enforcement purposes under certain conditions. Much of the information in our files is especially sensitive or very personal. Furthermore, participation in social security programs is mandatory, so people cannot limit what information is given to us. Therefore, we generally disclose information for law enforcement purposes only in limited situations. Paragraphs (b), (c), and (d) of this section discuss the disclosures we generally make for these purposes.

(b) *National security.* We disclose information to the Federal Bureau of Investigation or the U.S. Secret Service for their investigations or prosecutions involving national security. These include investiagations of the commission, attempted commission, or the threatened commission of an act of assassination, espionage, or sabotage. In these cases, we make the disclosure only if the head of the requesting agency (or his or her designee) certifies in writing that the information is needed to protect the national security.

(c) *Other serious crimes.* SSA may disclose information for other criminal law enforcement purposes if there is imminent danger to human life (like hijacking, holding hostages, or acts of terrorism), or if—the crime is a violent felony like murder or kidnapping; and if the law enforcement agency has narrowed its investigation down to a specific suspect or suspects.

The Privacy Act allows use to disclose if the head of the law enforcement agency makes a written request giving enough information to show—That these conditions are met; What information is needed; and Why it is needed.

(d) *Criminal abuse of a social security program or similar program.* We disclose information when necessay to investigate or prosecute alleged or suspected fraud or similar criminal abuse in a social security program. We also disclose for the same purposes for other income-maintenance or health-maintenance programs (e.g., other governmental pension programs, unemployment compensation, general assistance, Medicare, or Medicaid).

§ 401.320 Health or safety.

The Privacy Act allows us to disclose informaton in compelling circumstances where an individual's health or safety is affected. For example, if we learn that someone has been exposed to an excessive amount or radiation, we may notify that person and appropriate health officials. If we learn that someone has made a threat against someone else, we may notify that other person and law enforcement officials. When we make these disclosures, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

§ 401.325 Statistical and research activities.

(a) *General.* Statistical and research activities often do not require information in a format that identifies specific individuals. Therefore, whenever possible, we release information for statistical or research purposes only in the form of aggregates or individual data that cannot be associated with a particular individual. The Privacy Act allows us to release records if there are safeguards that the record will be used solely as a statistical or research record and the individual cannot be identified from any information in the record.

(b) *Safeguards for disclosure with identifiers.* The Privacy Act also allows us to disclose data for statistical and research purposes in a form allowing individual identification when the purpose is compatible with the purpose for which the record was collected. We will disclose personally identifiable information for statistical and research purposes if—

(1) We determine that requester needs the information in an identifiable form

for a statistical or research activity, will use the information only for that purpose, and will protect individuals from unreasonable and unwanted contacts;

(2) The activity is designed to increase knowledge about present or alternative social security programs or other Federal or State income-maintenance or or health-maintenance programs, or consists of epidemiological or similar research; and

(3) The recipient will keep the information as a system of statistical records and will follow appropriate safeguards so we can be sure the information is used or redisclosed only for statistical or research purposes. No redisclosure of the information may be made without SSA's approval. We will also require these safeguards when we disclose personally identifiable information to another HEW component for its own statistical or research functions (see § 401.305).

(c) *Statistical record.* A statistical record is a record in a system of records which is maintained only for statistical and research purposes, and which is not used to make any determination about an individual. We maintain and use statistical records only for statistical and research purpose. We may disclose a statistical record if the conditions in paragraph (b) of this section are met.

(d) *Compiling of records.* Where a request for information for statistical and research purposes would require us to compile records, and doing that would be administratively burdensome to ongoing SSA operations, we may decline to furnish the information.

§ 401.330 Congress.

(a) We disclose information to either House of Congress. We also disclose information to any committee or subcommittee of either House, or to any joint committee of Congress or subcommittee of that committee, if the information is on a matter within the committee's or subcommittee's jurisdiction.

(b) We disclose to any member of Congress the information needed to respond to constituents' requests for information about themselves (including requests from parents of minors, or legal guardians). However, these disclosures are subject to the restrictions in § 401.400.

§ 401.335 General Accounting Office.

We disclose information to the General Accounting Office when that agency needs the information to carry out its duties.

§ 401.340 Courts.

(a) *General.* The Privacy Act allows us to disclose information when we receive an order from a court of competent jurisdiction. However, much of our information is especially sensitive. Participation in social security programs is mandatory, and so people cannot limit what information is given to SSA. When information is used in a court proceeding, it usually becomes public knowledge, and its confidentiality cannot be protected. Therefore, we treat subpoenas or other court orders for information under the rules in paragraph (b) of this section.

(b) We disclose information in response to court orders if—

(1) Another section of this part would allow the release; or

(2) The Secretary of HEW is a party to the proceeding; or

(3) The information is necessary for due process in a criminal proceeding.

In other cases, we try to satisfy the needs of courts while preserving the confidentially of information.

§ 401.345 Other specific recipients.

In addition to disclosures we make under the "routine use" provision, we also release information to—

(a) The Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity; and

(b) The National Archives of the United States if the record has sufficient historical or other value to warrant its continued preservation by the United States Government. We also disclose a record to the Administrator of General Services for a determination whether the record has such a value.

§ 401.350 Deceased persons.

We do not consider the disclosure of information about a deceased person to be a clearly unwarranted invasion of that person's privacy. However, in disclosing information about a deceased person, we insure that the privacy rights of a living person are not violated.

Subpart D—Obtaining and Correcting Your Records

401.400 General.

The Freedom of Information Act allows you to request information from SSA whether or not it is in a system of records. The Privacy Act gives you the right to have access to most records about yourself that are in our systems of records. Exceptions to this right include—

(a) Certain medical records (see 5 U.S.C. 552a(f)(3) and section 401.510);

(b) Certain criminal law enforcement records (see 5 U.S.C. 552a (j) and (k), and HEW's rule in 45 CFR 5b.11); and

(c) Records compiled in reasonable anticipation of a court action or formal administrative proceeding.

We generally follow the HEW rules in 45 CFR 5b.5 on access to an individual's record. However, in a few situations our rules are somewhat more strict, because of the especially sensitive nature of many of our records. This subpart briefly describes our rules.

§ 401.405 How to get your own record.

(a) *Who may ask.* You may ask for any record about yourself that is in an SSA system of records. If you are a minor, you may get information about yourself under the same rules as for an adult. If you are the parent or guardian of a minor, or the legal guardian of someone who has been declared legally incompetent, you may ask for information on behalf of that individual. See § 401.410 for the rules which apply to requests for medical records.

(b) *Identification.* When you request access to a record, you must identify yourself. One means of identity is your signature.

(c) *How to ask.* One way to request access to a record is by writing to the manager of the SSA system of records. The name and address of the manager of the system is part of the notice of systems of records which is published annually in the **Federal Register.** Every local social security office keeps a copy of the **Federal Register** containing that notice. That office can also help you get access to your record. You do not need to use any special form to ask for a record about you in our files, but your request must give enough identifying information about the record you want to enable us to find your particular record. This identifying information should include the system of records in which the record is located and the name and social security number (or other identifier) under which the record is filed. We do not honor requests for "all records," "all information," or similar blanket requests.

§ 401.410 Medical information.

(a) *Your own record.* When you request medical information about yourself, you must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform you of its contents at your representative's discretion. If you do not designate a representative, we may decline to give

you the information. However, there is some medical information you may request which we may give directly to you.

(b) *Requests on behalf of a minor.* If you are the parent or guardian of a minor, we will release the minor's medical record only to a representative that you name in writing. The representative in these cases must be a physician or other health professional (excluding a family member) who would be willing to review the record and inform you of its contents at the representative's discretion. If you do not designate a representative, we may decline to give you the information. We will also make reasonable efforts to inform the minor that the record has been given to the representative. We will also tell the representative that further disclosure may be an unwarranted invasion of the minor's privacy.

(c) *Requests on behalf of an incapacitated adult.* If you are the legal guardian of an adult who has been declared legally incompetent, you may receive his or her records directly.

§ 401.415 Records about two or more individuals.

(a) When information about two or more individuals is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record.

(b) When there is information about yourself filed under someone else's social security number, you may receive all information about yourself as if it were filed under your own number.

§ 401.420 How to correct your record.

(a) *How to request a correction.* This section applies to all records kept by SSA (as described in § 401.105) except for records of earnings. (Section 422.125 of this chapter describes how to request correction of your earnings record.) You may request that your record be corrected or amended if you believe that the record is not accurate, timely, complete, relevant, or necessary to the administration of a social security program. To amend or correct your record, you should write to the manager identified in the notice of systems of records which is published annually in the **Federal Register** (see § 401.405(c) on how to locate this information). You should submit any available evidence to support your request. Your request should indicate—

(1) The system of records from which the record is retrieved;

(2) The particular record which you want to correct or amend;

(3) Whether you want to add, delete or substitute information in the record; and

(4) Why you want to correct or amend the record.

(b) *What we will not change.* You cannot use the correction process to alter, delete, or amend information which is accurate, timely, or relevant to a determination of fact. Disagreements with these determinations are to be resolved through the SSA appeal process. However, you may submit a statement on why you think certain information should be altered, deleted, or amended, and this will be made part of your file.

(c) *Acknowledgement of correction request.* We will acknowledge receipt of a correction request within 10 working days, unless the request can be reviewed, processed, and an initial determination of denial or compliance given before that time.

(d) *Notice of error.* If the record is wrong, we will correct it promptly. If wrong information was disclosed from the record, we will tell all those who received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error, e.g., a change of name or address.

(e) *Record found to be correct.* If the record is correct, we will advise you in writing of the reason why we refuse to amend your record and we will also inform you of your right to seek a review of the refusal and the name and address of the official to whom you should send your request for review.

Subpart E—Appeals

§ 401.500 Which decisions are covered.

This subpart describes how to appeal decisions concerning requests for correction of a record, disclosure of a record, or access to a record.

§ 401.505 Appeal of refusal to correct a record.

(a) If we deny your request to correct a record, you may request a review of that decision. As discussed in § 401.420(e), our letter denying your request will tell you to whom to write.

(b) The official will review your request within 30 working days from the date of receipt. However, for a good reason and with the approval of the Commissioner, this time limit may be extended an additional 30 days. In that case, the official will notify you about the delay and when the review is expected to be completed. If, after review, the official determines that the record should be corrected, the record will be corrected. If, after review, the reviewing official also refuses to amend the record exactly as you requested, the official will advise you—

(1) That your request has been refused and the reason;

(2) That this refusal is SSA's final decision;

(3) That you have a right to seek court review of this request to amend the record; and

(4) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. Your statement will be made available to anyone to whom the record is subsequently disclosed, together with a statement of SSA's reasons for refusal to amend the record. Also, prior recipients of the record will be provided a copy of your statement.

§ 401.510 Appeals after denial of disclosure or access.

(a) If we deny your request for disclosure of information about others or for access to your own record, you may appeal to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days after you receive the notice denying your request or only partially allowing your request.

(b) The Commissioner will mail you a written decision on your appeal. This decision will state why the decision was made and will explain your rights to have the matter heard in court.

(c) If the Commissioner affirms the denial of a request for records (completely or partially), or fails to comply with the time limits that apply in FOIA cases, you may ask to have the matter reviewed in a Federal district court.

[Regs. No. 1]

[FR Doc. 79-10586 Filed 4-9-79; 8:45 am]

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Part IV

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Performance Reporting System/Outreach and Complaint Procedures

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Parts 271, 275]

Food Stamp Act of 1977; Performance Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking discusses the establishment of a Performance Reporting System by all State agencies. This rulemaking also includes a proposed amendment to Part 271 in order to incorporate definitions related to the system into § 271.2. The changes to the Performance Reporting System include provisions made by the Food Stamp Act of 1977 and other improvements necessary to refine and build on the current system.

DATE: Comments must be received on or before May 25, 1979, in order to be assured of consideration.

ADDRESS: Comments should be submaitted to: Nancy Snyder, Deputy Administration for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Murice Tracy, Chairperson, Performance Reporting System Regulations Task Force, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. (202) 447–4002.

SUPPLEMENTAL INFORMATION:

Introduction

The Food Stamp Act of 1977 provides for the establishment of a program monitoring system by State agencies. This system is intended to provide States ad the Food and Nutrition Service (FNS) with a management tool which will provide data on how efficiently and effectively States are operating all aspects of the Food Stamp Program. These proposed regulations are more detailed than rules currently in effect concerning the components of the Performance Reporting System, and place greater emphasis on corrective action efforts which will result in the correction of deficiencies in both program and system operations.

Comments were requested and received by the Department from various organizations interested in recommending changes to the Performance Reporting System. Public hearings were held in October 1977 and some of the comments were directed to changes in the system. In addition, meetings have been haled with the Food Research and Action Center, American Public Welfare Association, the National Conference of State Welfare Finance Officers, and FNS Regional Office staff. Prior to the development of these regulations, State agencies were provided a proposal on a new corrective action process. Subpart E of these regulations includes a new proposal for the corrective action process based on comments received from State agencies. All comments received by the Department were considered in drafting these proposed regulations. In addition, the legislative history of the Act was closely examined to determine the purpose and intent of those provisions concerning the Performance Reporting System.

A 45 day comment period on this proposal is intended to allow the public an opportunity to present to the Department any criticisms or comments on the Performance Reporting System in order to affect final regulatory policies.

The Department requests that the public provide comments and recommendations in enough detail to allow an adequate evaluation of the feasibility of the recommendations for possible incorporation into the final rules. Full consideration will be given to *all* comments received no later than the closing date specified above in developing final rules.

In reviewing this proposed rulemaking, reference to other rulemakings published by the Department will be useful. These rulemakings include final regulations published October 17, 1978 (43 FR 47846), which implement major aspects of the Food Stamp Act of 1977 and the current Performance Reporting System regulations published October 29, 1976 (41 FR 47453), Part 275.10.[1]

Comment Period

The President directed each Executive Agency to adopt procedures to improve the notice and comment rulemaking process (Executive Order 12044, issued March 23, 1978 (43 FR 12661)). This Executive Order also provides that agencies allow a 60 day comment period for significant rulemakings except under certain circumstances.

This rulemaking will have a significant impact on State agencies in terms of expanding and refining the administration and operation of the existing Performance Reporting System. Many public interest groups are concerned that final regulations on the system be implemented as soon as possible to ensure State agencies are providing adequate service to participants and potential participants and operating the Food Stamp Program as required by the Act and reguations. In addition, the Department is concerned that final regulations be issued promptly to monitor States' (1) administration and operation of the new program requirements; (2) quality control (QC) error rates related to program eligibility, overissuances, and underissuances; and (3) activities related to service to participants and potential participants. Therefore, evaluating the importance of public input against the public's and the Departments's interest in implementation of the Performance Reporting System as expeditiously as possible to ensure effective and efficient State administration and operation of the program, Robert M. Greenstein, Acting Administrator, Food and Nutrition Service, has decided to allow 45 days, rather than 60 days, for comment.[2]

Further, to expedite public review of the comments and issuance of final regulations, the Department requests that comments be sent so as to be received by FNS in Washington, D.C., on or before May 25, 1979. The Department will not guarantee that any consideration will be given to comments postmarked the 45th day but not received in Washington, D.C., by that day. The public is urged to review this proposal as soon as possible and mail all comments in advance of the comment-period deadline to ensure timely receipt and consideration of the comments.

Comments received on this proposal shall be available for public inspection and copying at the Food and Nutrition Service, Room 658, 500 12th Street, S.W., Washington, D.C., during regular business hours.

Implementation

Although the Food Stamp Act of 1977 does not provide timeframes for implementation of the Performance Reporting System, § 1303 of Pub. L. 95–113 states that regulations should be implemented "* * * as expeditiously as possible * * *"

The Department is proposing that the requirements contained in Subpart C of these regulations for conducting QC

[1] The Performance Reporting System regulations may be found in 7 *Code of Federal Regulations*, Part 275 which is accessible in most law libraries. Interested persons may obtain copies from FNS.

[2] Executive Order 12044 allows for comments periods of less than 60 days under special circumstances such as that presented by this rulemaking.

reviews be implemented by State agencies no later than September 1, 1979. The Department is also proposing that all other requirements of the Performance Reporting System regulations be implemented no later than October 1, 1979. States would be required to submit to FNS Regional Offices for approval State QC plans prior to September 1, 1979. Prior to October 1, 1979 States would be required to submit to FNS Regional Offices for approval the following: (1) requests for an exception (if deemed necessary) to the requirement for a full-time Performance Reporting System Coordinator; (2) any new requests for establishment of management units; and (3) management evaluation review worksheets. States would also be required to submit any changes made in the 78/79 E&E review schedules (see § 275.20).

In proposing September 1, 1979 as the implementation date for conducting QC reviews the Department recognizes that some States will have households participating based upon some of the eligibility criteria of the 1964 Food Stamp Act. For example, a case converted via a desk review would be converted to the eligibility criteria for income and deductions but may not have been converted to the new criteria for resources, work registration, tax dependency, etc. This will result from households which had been certified for more than six months being converted to the requirements established in Part 273 of the regulations published October 17, 1978, via desk reviews, as specified in § 272.1(g)(1)(iii). It is possible that some of these households could continue to participate without being fully converted until February 1980.

While these partially converted cases will have an effect upon the management evaluation (ME) review process, the primary impact will fall upon QC review activity. States' quality control samples could contain a number of desk converted cases, which would have to be accounted for. To handle these cases, the Department proposes that States review them based upon the conversion requirements of § 272.1(g)(1)(iii) in conjunction with the requirements of Part 273. This would ensure that the data gathered from QC review activity represents States' entire caseloads and accurately reflects certification requirements. This approach is consistent with emergency rulemaking published February 9, 1979 (44 FR 8548), which established the modified QC system.

If this approach is adopted, States' QC systems would examine desk converted cases following standard review procedures. Only when the reviewer found an error in one of these cases which results from an element of eligibility which was not converted and was not required to have been converted, would the reviewer disregard the error. When an element has, or should have been, converted to the requirements of the October 17, 1978, regulations the reviewer would handle any error in that element in accordance with the procedures of Part 275.

When analyzing the effects the above proposal would have on States' QC systems the Department also considered simply excluding desk converted cases from the QC sample as "not subject to review". This would simplify the review process and yield data representative only of those cases fully converted to the provisions of the October 17 regulations. However, the Department believes that this would result in too large a proportion of States' caseloads being ignored.

The Department is particularly interested in receiving comments on the proposed implementation requirements and whether implementation of QC by September 1 and October 1 for the remaining PRS regulations is feasible. The Department is also interested in obtaining information from State agencies on how much lead-time is needed to implement *and* what action must be undertaken to implement these regulations.

Performance Reporting System

Administration

General Scope and Purpose

The Food Stamp Act of 1977 provides for the Secretary to establish standards for the efficient and effective administration of the Food Stamp Program by the States. The Department proposes to define the "standards" as all program requirements set forth in the Food Stamp Program Regulations. To determine how efficiently and effectively States are operating the program and ensure compliance with program requirements, Part 275 of these regulations establishes a program monitoring system—The Performance Reporting System. This system was in existence under the Food Stamp Act of 1964. The House Committee in developing the Act of 1977 indicated the necessity of placing greater emphasis on effective State administration of the program by building on the current Performance Reporting System.

As required by the 1977 Act, State agencies are responsible for submitting reports to the Department which specify the actions proposed to be taken and implemented in order to be in compliance with all program requirements. If a State fails without good cause to meet any of the program requirements, or has failed to carry out the approved State plan of operation, the Act authorizes the Department to withhold Federal administrative funds from the State as determined appropriate. The Department proposes to continue notifying State agencies of noncompliance with program requirements (as was done under the regulations implementing the 1964 Food Stamp Act) prior to suspending and/or disallowing Federal administrative funds. In terms of withholding funds, the House Report points out that "This penalty is intended to provide a significant financial incentive for States to improve overall program management, but the Committee recognizes the self-defeating nature of precipitously removing Federal administrative funds.

Therefore, the Committee expects that there would be opportunity for the States to demonstrate "good faith" efforts at accomplishing their plans before funds would be reduced." (Report 95–464 on H.R. 7940, June 24, 1977, pp. 362–363.) In determining "good cause" for States' noncompliance with program requirements, the Senate conferees indicate that the Secretary should look for circumstances completely beyond the State's control, such as a natural disaster. The Committee specifies that political or fiscal problems must be considered within the State's control. "When a State agrees to participate in the food stamp program, it does so voluntarily, knowing full well that in agreeing to operate the program, it also agrees to follow Federal guidelines." (Congressional Record—Senate, May 24, 1977, S8459.) Regulations regarding State liabilities and Federal sanctions are not being issued as part of the Performance Reporting System regulations. Liability and sanction regulations (Part 276) will be issued as a separate proposed rulemaking docket.

The Food Stamp Act of 1977 continues to authorize the Secretary to pay each State agency 50 percent of all administrative costs involved in operating the program. The Act, however, includes new provisions regarding administrative funding. Among other things, the Act authorizes the Secretary to increase a State agency's share of administrative funds to 60 percent for those States whose cumulative allotment error rate with respect to basic program eligibility, overissuance, and underissuance as

determined by quality control are less than 5 percent. Those States not eligible for the increased Federal cost sharing are required to specify State action proposed in order to reduce the cumulative allotment error rates.

The proposed regulations on the Performance Reporting System have changed in content substantially from previous regulations regarding the system. These regulations contain more explanation of the proposed requirements for establishing all aspects of the system, specifically the requirements for conducting management evaluation (ME) reviews (formerly known as E&E reviews) and quality control (QC) reviews. In the past, the majority of the requirements dealing with the system have been contained in Food and Nutrition Service (FNS) Handbooks.

As will be noted throughout these proposed regulations, reference is being made to management evaluation (ME) reviews. In the past, the entire system has been referred to as the "E&E system" and a specific review within the system has been referred to as "E&E reviews" (sometimes referred to as "project area operations reviews"). Therefore, to delineate between the system and the review the Department is emphasizing the use of "Performance Reporting System" when referring to the system and proposing to rename "E&E reviews" to management evaluation (ME) reviews.

State Agency Responsibilities

Establishment of the Performance Reporting System. As provided by the Food Stamp Act of 1977, the Department continues to require States to maintain performance reporting systems which will continuously reflect administration of the program and improvement in program operations. The Department proposes to continue requiring the States' system to consist of: (1) Collection of data through conducting ME reviews and QC reviews; (2) analysis and evaluation of data from all management information sources; (3) corrective action planning; (4) corrective action implementation and monitoring; and (5) reporting on program Performance. Subparts B through F of Part 275 include the proposed requirements for a State agency's establishment of each component of the Performance Reporting System.

The Department is continuing to propose that State agencies designate a person to coordinate the activities of the Performance Reporting System. Due to the extensive scope of the system and the responsibility it entails, the Department is proposing that State agencies designate a fulltime coordinator unless a State can demonstrate that a part-time coordinator can effectively fulfill the responsibilities of the system. One component of the system is corrective action implementation. In the past, there has been confusion at all levels on what individual or group of individuals at the State level should be responsible for ensuring the accomplishment of this activity. Currently, many State Performance Reporting System Coordinators (presently referred to as E&E Coordinators) are not in a position of authority to ensure corrective action is effected. In addition, FNS in dealing with State agencies concerning corrective action has encountered difficulties in determining which individual(s) has the authority to ensure corrective action measures are effected. Therefore, the Department is proposing that the State agency designate an organizational entity which is at a level of authority within the State structure to effect corrective action at the State and project area levels. The State Welfare Commissioner may wish to delegate this authority to an individual or group of individuals within the Commissioner's office. The Department is not requiring the hiring of new staff to fulfill this requirement.

Staffing standards. As explained in the Food Stamp Program regulations (published October 17, 1978), the Department intends to develop more detailed and comprehensive staffing standards, after appropriate study. The Department is proposing that state agencies employ sufficient staff in order to administer the Performance Reporting System as required by regulations. The Department proposes to continue requiring State staff used to conduct QC reviews to disqualify themselves if prior knowledge exists of either the household or the decision being reviewed. The Department is also proposing that local project area staff not be used to conduct QC or ME reviews in order to ensure no prior knowledge on the part of QC or ME reviewers. Exceptions to this requirement concerning local level staff may be granted by FNS if a State can prove that local level staff can effectively conduct the reviews and have no prior knowledge of individual household circumstances of the project area's operations.

Federal Monitoring

The proposed Performance Reporting System regulations for the firsttime identify, in some detail, those reviews proposed to be conducted by FNS in monitoring and evaluating State's operation of the Food Stamp Program and Performance Reporting System. Because of the different types of reviews which must be conducted, the Department is emphasizing in these regulations that FNS reviewers will consolidate the scheduling and conducting of these reviews to the maximum extent possible in order to reduce the frequency of entry into the State agency. However, the Department is proposing to continue allowing FNS Regional Offices to conduct additional reviews to examine or reexamine State agency or project area operations.

In terms of State agency responsibilities, the Department is proposing to continue requiring immediate corrective action on program or system deficiencies detected as a result of FNS reviews which do not require extensive measures for corrective action. This would include but not be limited to deficiencies in individual cases, absence of sampling to review certain program requirements during ME reviews when required, lack of verification by QC reviewers, etc. The Department is proposing to continue requiring States to develop corrective action addressing all program and system deficiencies detected during FNS reviews within 60 days of receipt of the findings. The Department is proposing to require corrective action on each deficiency and those requiring an amendment to the State Corrrective Action Plan would be submitted to the appropriate FNS Regional office no later than 60 days from the date the State agency receives the findings of a review conducted by FNS. A new corrective action process is being proposed by the Department and can be found in more detail in Subpart E of these proposed regulations.

Reviews of State agency's administration/operation of the Food Stamp Program. The Department previously proposed that State agencies conduct reviews of Food Stamp Program operations performed by the State agency, as opposed to the local or project level. The Department received adverse comments on this proposal and States indicated that FNS should conduct these reviews. Therefore, the Department is proposing that FNS continue conducting reviews of those food stamp program operations performed at the State agency level. As proposed, the reviews would include an examination of those functions performed at the State level such as certification and issuance procedures, training, bilingual services, outreach,

complaint procedures, fraud, and other areas as identified in these regulations.

Review of State agency's Performance Reporting System (PRS). The Department is continuing to propose that reviews of the State's PRS consist of two types of reviews: ME & QC reviews.

Management evaluation (ME) reviews. Previously, these reviews were referred to as "Federal Reviews of State Agencies' Performance Reporting System Operations." The Department proposes to continue conducting on an annual basis reviews to examine a State's methods and procedures for conducting ME reviews. The review would include an assessment of sampling techniques and data collected by the State in conducting the reviews. (See the preamble on ME reviews which provides in detail the Department's proposal of requiring the use of sampling by States during ME reviews.) The Department is also proposing to continue assessing during this review the State agency's system for data analysis and evaluation. A review by FNS of the State's PRS for conducting ME reviews would provide FNS with a method of determining how the system is operating and States with information on where improvements are needed in both program and system operations.

Quality control (QC) reviews. These reviews were formerly referred to as "Federal Reviews of State Agencies' Quality Control System Operations." The Department proposes to continue conducting on a semiannual basis reviews of the State's PRS for conducting QC reviews. Exceptions to conducting two annual reviews may be granted by FNS (National Office) when a State agency justifies and the FNS Regional Office agrees that one annual system review is sufficient *and* the State currently is taking adequate steps to correct existing system deficiencies. The Department proposes to conduct these reviews only of those State agencies not claming entitlement to enhanced funding under subsection 16(c) of the Food Stamp Act of 1977. (A specific review is being proposed by the Department for those Stat s claiming entitlement to enhanced funding. These reviews are discussed later in the preamble.) As proposed, the review of the State's system for conducting QC reviews would continue to include an assessment of the State agency's methods and procedures for conducting QC reviews and an examination of the State's sampling techniques.

Review of State agency's cumulative allotment error rates. Subsection 16(c) of the Food Stamp Act of 1977 specifies that when a State's cumulative allotment error rates with respect to basis eligibility, overissuance, and underissuance of coupons are less than 5 percent, the State agency shall be entitled to 60 percent administrative funds. The Department feels that a method of monitoring States' reported error rates must be implemented. In establishing a method of monitoring, the Department is not assuming misrepresentation on the part of State agencies in their efforts to obtain entitlement to enhanced funding. The Department is aware, however, that misapplication of review procedures on the part of individual State reviewers could substantially impact on a State's true error rates. Therefore, the Department is proposing to conduct a specific type of validation review whenever a State reports cumulative allotment error rates of less than 5 percent. Under the proposed regulations, the review would include validation of the error rates to ensure rates of less than 5 percent; examination of State QC sampling techniques to ensure they are FNS-approved procedures as established in Subpart C of these regulations; and affirmation of the State's QC completion rate to ensure the rate is at the level required by § 275.11(f) of these regulations.

As proposed, the results of these reviews would determine a State's entitlement to enhanced funding. The specifics of the review, such as sample size and the review procedures, may closely parallel the reviews of AFDC and Medicaid cases conducted by HEW's QC and will be contained in an FNS Handbook available to the public.

Assessment of corrective action. In the past, the review of corrective action has been conducted as part of the Federal Review of State Agencies' Performance Reporting Systems. The Department proposes to identify the assessment of corrective action as a separate review due to the importance of corrective action as part of the system. The Department proposes to continue conducting reviews of corrective actions to ensure that: All deficiencies are identified and analyzed in terms of causes and magnitude; deficiencies are included in the appropriate corrective action plan; the State agency is implementing corrective actions as indicated in the corrective action plan; target completion dates are being met; and corrective actions are effective. As proposed, the reviews would be conducted at the State agency, project area and local level offices. The Department is also proposing to review the State's corrective action monitoring and evaluation efforts (See § 275.19).

In order to provide States and FNS with an early indication of problems in the corrective action process, the Department is proposing to conduct on-site reviews of corrective action. These reviews would be conducted of selected corrective actions at least semiannually or as frequently as considered necessary to ensure States are implementing corrective action measures within the timeframes specified in the State and Project Area/Management Unit CAP's.

Record Retention

The Department is proposing to continue requiring State agencies to maintain Performance Reporting System records in a manner which permits ready access to and use of the records for audit and other subsequent review purposes. As proposed, this would include retaining the records without loss or destruction for the 3-year period required by § 272.1(f) and filed chronologically in an orderly sequence. The Department is proposing to define PRS records as: information used in data analysis and evaluation; corrective action plans; corrective action monitoring records; and ME and QC review records. As proposed, ME review records would include: documentation of review findings; sources from which information was obtained; procedures used to review Food Stamp Program requirements including sampling techniques; and ME review plans. QC review records would include: Forms FNS–245; Forms FNS–248; other materials supporting the review decision; sample lists; tabulation sheets; and semi-annual reports. The Department is proposing to continue requiring States upon request to submit documented evidence of ME review findings to the FNS Regional Office for purposes of evaluating State corrective action plans. Information on individual households for PRS purposes as proposed would continue to be safeguarded by State agencies in accordance with subsection 11(e) (8) of the Food Stamp Act of 1977 and FNS policies on disclosure of information for the Food Stamp Program.

Management Evaluation Reviews

Scope and purpose. Section 16(b)(2) of the Food Stamp Act of 1977 requires the Secretary to "* * * instruct each State to submit, at regular intervals, reports which shall specify the specific administrative actions in order to meet the efficiency and effectiveness standards * * *". To establish a sound basis for determining States' compliance

with efficiency and effectiveness standards, the Department proposes to maintain the requirement that each State operate a Management Evaluation (ME) review system, referred to as "reviews of project area operations" under previous rulemaking. This review system would measure States' and project areas' compliance with program requirements (standards) established in FNS regulations, FNS-approved State manuals, and States' approved Plans of Operation. The objectives of this system would be to provide: (1) a basis for project areas to improve and strengthen program operations by identifying and correcting deficiencies; (2) a continuing flow of information between the project areas, the States, and FNS, which is necessary to develop the solutions to problems in program policy and procedures; and (3) a systematic method of monitoring and assessing program operations in the project areas.

The Department proposes that State agencies continue to conduct reviews on an annual basis for large project areas and on a biennial basis for small project areas. Since large project areas are defined as those issuing over $500,000 per month (based upon the most recent information available at the time the biennial review schedule is developed) the proposed regulations would concentrate States' resources in those areas with the highest levels of participation. Upon notification by FNS, State agencies may be required to conduct reviews on a more frequent basis. This additional review activity would only be required when there is reason to believe a serious problem exists in a project area.

The proposed regulations would also allow States to conduct additional full or partial ME reviews when analysis and evaluation, as explained in § 275.15, of a given deficiency does not provide the necessary information to determine the cause, extent, or specific nature of the deficiency. The amount of review activity and the method of review used would be dictated by the type of information needed. The purpose of this proposal would be to ensure that States obtain the information necessary to plan and effect corrective actions that will eliminate all deficiencies in their operation of the program. Very often data concerning problems in States' administration is fragmented or incomplete. In these instances the Department believes that a limited ME review could provide information crucial to the appropriate use of corrective action resources. While the Department realizes that these additional reviews could create some difficulty in scheduling regular ME reviews, it is believed that the benefits of this provision should outweigh any costs involved in schedule modifications. Further, the intent of this proposal is that States only conduct reviews to the extent necessary to obtain the desired information. It is anticipated that this would result in reviews limited in scope to only one area of program operation or to a single program requirement.

Management units. For the purpose of ME reviews, the proposed regulations would allow State agencies to establish management units which are different from existing project areas designated by FNS for participation in the program. A management unit is an area based upon a State-established welfare district, region, or other administrative structure that combines small project areas or divides large project areas into 2 or more smaller units for ME review purposes. The provision for management units was contained in previous regulations, under the term "administrative units," and has been used by many States to more effectively monitor local level operations. The proposed regulations allow FNS the option of requiring large project areas within a State to be separated into two or more smaller management units.

This provision is to ensure that no project area is too large for effective ME monitoring. While management units could be designated as large or small, based upon the criteria for project areas, management units could not be established primarily for the purpose of reducing the frequency of review or total sample sizes.

The proposed regulations would require that States submit requests, before establishment of management units, to appropriate FNS Regional Offices and that FNS would have final authority for approval of such units or any changes in those units previously approved by FNS. The proposed regulations specify criteria that would be met before requesting approval and the information that would accompany the request.

Once an approved management unit is established it would be treated as any other project area for ME review purposes and subject to the same requirements, such as additional reviews as determined necessary by FNS. Throughout the remainder of Subpart B of Section 275 of the proposed regulations and this preamble any reference made to project areas will also apply to management units.

Selection of sub-units for review. As stated in the proposed regulations, a sub-unit is any physical entity within a project area involved in the operation of the Food Stamp Program, excluding Post Offices. Sub-units would be classified based upon functional responsibility as certification offices, issuance offices, bulk storage points, reporting points, or data management units. Under the proposed regulations any sub-unit in a project area could be subject to review during ME reviews. This would ensure complete coverage of a project area's operation of the program. However, the Department realizes the time and staff limitations each State faces and proposes that only a sample of sub-units be selected during each review.

The Department is proposing that State agencies select a random sample of sub-units from each functional classification. The sub-units included in each classification would constitute a separate sample frame from which separate samples would be selected following the sample sizes specifed in the proposed regulations. Each sub-unit selected from each classification would be reviewed based upon the program requirements associated with the functions performed in that sub-unit. The purpose of sampling sub-units randomly would be to ensure that the offices selected for review are representative of all offices within the project area being reviewed. While this method of selection would provide more reliable data on the project area as a whole, it would result in a more rigid review system. Therefore the Department has proposed several modifying provisions which are discussed below.

When a sub-unit has more than one functional responsibility, it would be listed in each applicable classification; and if selected from a given sample frame it would be considered to have been selected from each frame in which it was listed. The sample size for each applicable classification would then be reduced by one, and all requirements related to the functions performed at the sub-unit would be reviewed following standard procedures. The Department believes that this provision for sub-units with combined responsibilities would reduce ME review travel time and enable States to concentrate monitoring efforts on multi-function sub-units. The proposed rules also provide that when a sub-unit selected for review acts as the parent office (i.e., maintains records, provides supervision) for itinerant issuance and/or certification points, at least one itinerant point per sub-unit would be reviewed, provided that an itinerant point is in service at the time the ME review is conducted.

In order to allow States greater flexibility in the selection of sub-units, the Department also proposes that States be given the option of selecting a limited number of sub-units on a nonrandom basis. This would allow for the selection of offices that have suspected or known problems in their operation of the program or have special characteristics which may warrant closer monitoring. The proposed regulations would limit the number of sub-units that may be chosen on a nonrandom basis to 25 percent of the required sample size for a particular classification of sub-units. For example, if the required sample size for certification offices in a project area is eight, the State may select two offices which are in need of special attention and then select six more on a random basis. The two offices selected prior to sampling would be removed from the sample frame before the six other offices are randomly selected. As the provision for random sampling of sub-units is new to ME reviews, the Department hopes that all interested parties, State agencies in particular, will consider the impacts of sampling and provide the Department with comments.

The sub-unit sample sizes specified in Table 1 were developed based upon two considerations. First was that States have limited resources and can thus be expected to review a limited number of offices. Second was the need to ensure that project areas are reviewed in enough depth to ensure that any deficiency in program operations is detected and some indication as to the severity of the deficiency is obtained. The Department feels that States should be able to review the proposed sample sizes and at the same time these sizes will yield data representative of the project area's operation of the program. Under the proposed regulations, the actual method of selecting samples would be left to each State's discretion, so long as the method yields random and unbiased samples of sub-units. It is recommended, however, that States use a systematic sampling technique for frames containing large numbers of sub-units, as it would usually be the easiest to administer and the least time consuming. It is important to note that the proposed regulations would allow State agencies to exclude bank issuance offices from the sample frame for issuance offices, if it can be estabished that such offices have consistently been in full compliance with program requirements.

This proposal is made based upon FNS-Regional Office experience which indicates that banks very often maintain compliance with issuance requirements due to their familiarity with accountability procedures. The criteria for exclusion of bank issuance offices, as specified in § 275.7(g)(2), would ensure that only those offices which historically are in compliance with program requirement are in fact excluded. The Department believes that this provision would allow States to concentrate monitoring resources on issuance sites which have the greatest potential for error. The only instance in which a sub-unit selected in a sample could be excluded from the sample is when an audit or investigation is being conducted in that sub-unit simultaneous with the ME review, in which case a replacement would be randomly selected. Again, the Department hopes that all concerned parties examine these proposals for sub-unit sampling carefully and provide comments.

Review coverage. The proposed regulations require that State agencies review the areas of program operation identified in § 275.9 during each ME review. The program requirements associated with each area of program operation are specified in Parts 271, 272, 273, 274, 280, and 281 of FNS, USDA Regulations published October 17, 1978. The Department views all program requirements as important; thus the proposed regulations would require that all requirements be examined during each ME review. For example, in § 275.8(b)(1) "application processing" is identified as a program area that would be reviewed during each ME review. The program requirements associated with this area are specified in § 273.2 and include the requirements that States: use an FNS designed or approved application form; encourage and allow households to file an application on the same day they contact the Food Stamp Office; document the date the application was filed; mail application forms to households at their request; provide households with the address and telephone number of the correct certification office when the wrong office within a certification office is contacted; mail applications to the correct office on the day received when a household has filed it in the wrong office; make application forms readily accessible to potentially eligible households and those groups and organizations involved in outreach efforts; provide an application form to anyone who requests the form; post signs in the certification office which explain the application processing standards (requirements) and the right to file an application on the day of initial contact; and include similar information about same day filing in outreach material and on the application form. The requirements listed above apply to paragraphs (b) and (c) of § 273.2. Paragraphs (a), (d), (e), (f), (g), (h), (i), (j), (k) of § 273.2 specify the other requirements of "application processing" which would be reviewed during each ME review. While FNS would provide detailed instructions specifying the program requirements that would be reviewed, it would be incumbent upon State agencies to ensure that all requirements are reviewed during each ME review. When an area of program operation or a given program requirement is a function performed at the State level and the project area has no responsibilities for direct administration of the area or requirement, it would be excluded from the ME review of that project area, as it would be reviewed by FNS as proposed in § 275.3(d) and discussed earlier in this preamble.

Review process. The proposed regulations recognize that each project area's operational structure will differ and would allow States the option of reviewing each program requirement in a manner which will best measure the project area's compliance with the requirement. To ensure that each ME review would be carried out in accordance with the Department's proposed ME review requirements and conducted in a manner which would ensure complete coverage of the project area's operations, the proposed regulations would require State agencies to develop an ME review plan prior to each review. These plans would contain information concerning the project area's operation including: the number of sub-units (by classification); the number of each type of program record generated during the six month period prior to the month of review (for ATP and HIR cards only one month prior to the review); and where the records are physically maintained within the project area. In addition, the controls the project area uses to organize records must be identified. The identification of controls is particularly important when the proposed requirements of § 275.9(d) are examined. The proposed procedures for problem record selection are discussed later in this preamble in some detail. The ME review plan would also identify the project area, the dates of the ME review, the sub-units selected for review (including the method used to select them) and identification of any sub-units selected or excluded in accordance with § 275.7(g). Finally, the ME review plan would identify whether the State agency

plans to select program records only from those sub-units selected for review or on a project area-wide basis as described in § 275.9(d) (9), (10), (11) of the proposed rules.

The Department proposes that State agencies select random samples of casefiles and examine the program records contained therein to review all program requirements that lend themselves to such an approach. The proposed regulations establish selection of casefiles and examinations of program records contained therein as the preferred method for reviewing program requirements. However, there are many requirements that program record examination may not encompass. Where a program requirement cannot be reviewed through record examination, the proposed regulations would allow State agencies the option of using any of four other review methods or another technique that may better meet the State's particular situation. The only requirement State agencies would be required to observe is that regardless of which review method is used, it must ensure complete coverage of the program requirement(s) it is applied to.

Program record selection and examination. The Department proposes that State agencies incorporate a random sampling methodology into their ME review systems for the selection of casefiles and/or program records. The proposed regulations identify the program records that sampling would be applied to and the sample universes and frames for these records. The regulations also establish the sample sizes that would be required for each type of program record and the options States would have if the required sample size for a record could not be achieved.

The universe for a given program record would be all records of that type generated during six month period prior to the month the ME review is conducted; except that in the case of HIR and ATP cards the universes would be those generated during the month prior to the month of review. The universe would include pending and inactive as well as active program records.

The sample frames for program records could be logs, lists, or preferably casefiles. Casefiles would be used as the sample frame wherever possible since many types of program records are contained in casefiles and they are usually the most readily available system of records for sampling purposes. When selecting a sample of casefiles, the sample size would be based upon the program record that appears most frequently throughout the casefile. In this way, a single sample could yield the required sample for several types of program records.

If a sample of casefiles does not yield the required sample size for a program record, the proposed regulations would allow the State to either continue to select casefiles to achieve the required sample or use one of the other methods of review as described in § 275.9(d)(8). This provision is designed to allow States flexibility during the review process and ensure that ME sampling does not excessively burden States.

Where a given type of program record is not maintained in a casefile, but in a separate system of records, a separate sample of that program record would be selected from the system in which it is maintained.

The required sample size for a program record would be determined based upon the total number of such records in the project area's universe for that record. In many instances, the State may not have definitive data of the total number of program records in a project area or in individual sub-units. In these instances the Department proposes that States estimate the number of program records in project areas and/or sub-units based upon the most current and accurate data, which should be available in the project area or sub-unit being reviewed. Table 2 of the proposed regulations contains the specific sample sizes State agencies would be required to achieve for each type of record.

To ensure equal coverage of each sub-unit selected within a project area, the Department proposes that State agencies select casefiles and/or program records on a proportional basis from sub-units maintaining casefiles and/or program records. However, State agencies would have the option of selecting casefiles and/or records on a project area-wide basis. Where States are capable of selecting area-wide samples, this approach would be encouraged as the results would be easier to project to the entire project area. The Department further proposes that States be given the option to employ any sample selection technique as long as random and unbiased samples are obtained. These proposals are intended to allow States the flexibility necessary to carry out the proposed sampling requirements; recognizing the variations between States', project areas', and sub-units' operational structures. However, every program record or casefile would be reviewed once selected for review and every requirement reflected in a selected record would be examined. This would be necessary if reliable results are to be obtained from ME sampling.

This proposal for random sampling of casefiles and/or program records is a significant change from the requirements of previous rulemaking and FNS Instructions. Currently, State agencies are required to select some "adequate number" of program records to review program requirements. This "adequate number" has resulted in significant variations in the number of records selected in each project area during each review. Further, the manner in which records have been selected and the number reviewed has made the value of resultant data questionable in many instances. Finally, concern has been expressed at all levels over what constitutes an "adequate number" of records to review a given program requirement.

In order to strengthen the ME review system by obtaining more reliable data for corrective action planning and to assist States in their efforts to ensure complete coverage of project areas' operations, the Department developed the random sampling procedures outlined above and specified in the proposed regulations. While this proposal would require a more structured selection technique than States currently employ and would require increases in most States' ME review staffs, the Department feels that improved corrective actions based upon the data resulting from ME reviews would more than justify any cost increases. The proposed ME review system would provide reliable information on program requirements concerning both State accountability and service delivery to participants and/or potential participants.

Review worksheet. The Department proposes that States continue to use review worksheets, to be approved by FNS, to record findings of each ME review. The areas of program operation that would be identified on these worksheets are outlined in § 275.9(e) of the proposed regulations. These worksheets would be the all important link between the review activity itself, data analysis/evaluation and, ultimately, corrective action planning.

Conducting an ME review. To facilitate interested parties' understanding of how the proposed ME review system would operate, the following step-by-step description of an ME review is offered.

Following and documenting the ME review plan, State review team would first secure information from the project area concerning its organization icluding the number and functions of sub-units

(identifying those with combined responsibilities or itinerant service points), within the project area as well as the number and location of program records, by type, generated during the period of review and maintained within the individual sub-units. While the actual number of program records would be desirable, estimates based upon the best available data would suffice. If possible, the review team would also secure information at this time concerning the systems used to organize records maintained within the various sub-units, e.g., casefiles, lists, logs.

Having obtained the number of sub-units and their functions, the review team would list them based upon functional responsibility as certification offices, issuance offices, bulk storage points, reporting points, or data management units. Next the State would decide whether any of the sub-units should be selected prior to random sampling or if any bank issuance offices should be excluded from the list of issuance offices. If the State elects to select any sub-units on a nonrandom basis or exclude any banks, the lists would be adjusted accordingly with the sample frame for each classification consisting of the remaining sub-units in each list. The State would then randomly select the required numbers of sub-units from each frame based upon the Table 1 of the proposed regulations, decreasing required sample sizes by the number of sub-units which were selected on a nonrandom basis.

The State review team can now determine how and where program record selection will be conducted. Assuming the State has elected to select samples of program records only from those sub-units selected for review (as opposed to project area-wide sampling) the State would now examine the systems used to organize the records in each sub-unit. Wherever possible the State would use casefile systems as the sample frame for all records contained in casefiles. When using casefile systems as the sample frame for several program records, the program record that appears most often within the casefile system would determine the number of casefiles that should be selected to obtain the required sample size for each type of record contained in the casefile system. In most instances, applications should appear in the greatest quantity. Thus, the required sample size for casefiles would correspond to the required sample size for applications. Where a program record is not contained in a casefile system, but in a separate system of records, the State would use that system as the sample frame for that program record.

The required sample size for a given program record would be determined based upon the total number generated within the project area during the six-month period preceding the month of review; except in the case of HIR or ATP cards where the required sample size would be based upon the number generated during the month prior to the month of review. The required sample sizes for each type of program record is specified in Table 2 of the proposed regulations.

Once having identified where and how casefiles or individual program records are maintained within those sub-units selected for review, the review team would determine the sample sizes for each of the sub-units on a proportional basis as explained in detail in § 275.9(d)(9) of the proposed regulations. The next step is the actual selection of individual program records and/or casefiles within each sub-unit. The reviewers would select program records from systems containing active, inactive and pending records. At this point the State reviewers would begin using review worksheets documenting review techniques, review findings, etc. While any sampling technique could be used, systematic sampling is recommended and would probably be used in most instances. However, any technique used would have to ensure random selection of casefiles and/or program records. As casefiles and/or program records samples are selected the State reviewers would monitor how many of each type of program record appear in the sample(s) and determined if required sample sizes are being met. As explained in the proposed regulations, any casefile that contains or *should* contain a certain program record would be counted toward achievement of the required sample size for that record. Where selection of casefiles does not yield the required number of a certain record the State reviewers could randomly select additional casefiles until the required sample is achieved for that record or, to ease the workload burden, could use another method to review the program requirements reflected in that record. In either case, the State would ensure that the program requirements reflected by a given program record are reviewed in a manner which yields reliable findings.

Every program requirement reflected in those records selected for review would then be examined to determine if those requirements are being met. No records could be excluded from examination once selected unless the State selects additional casefiles to achieve the required sample size for a certain record. In this situation only the records being sampled for would be examined.

While selection and examination of program records would have covered many program requirements, many others would be reviewed using one of the other review methods identified in § 275.9(c)(2) of the proposed regulations. These review methods would be used to review all program requirements which could not be reviewed through examination of program records in all sub-units selected for review.

After all sampling and review activity is completed, the State review team would complete the necessary worksheets identified earlier in this preamble.

The Department solicits public comment on all of the proposed regulations regarding ME reviews, but particularly on those provisions dealing with sampling of sub-units and program records. Comment is sought on the administrative efficiency, cost effectiveness and any difficulties that would develop as a result of the incorporation of a sampling methodology into the ME review system. Any suggestions on how this proposal could be improved, or on specified components such as sample sizes or the availability of sample frames, would be welcome.

Quality Control Reviews

Scope and Purpose

The Food Stamp Act of 1977 provides a legislative basis for increased emphasis on program administration, including increased stress on the quality control program as a monitoring tool. The current requirement that States operate a quality control program to check the accuracy of the certification process was established by the Department in the regulations implementing the 1970 (1971) food stamp legislation. Prior to the 1977 Act there was no specific legislative provision requiring a food stamp quality control program. State agencies are now required by law to conduct quality control reviews as part of the Performance Reporting System. Quality control in the Food Stamp Program will continue to review active cases to determine that the household is eligible and receiving the correct allotment of food stamps, and negative cases to determine that households which were denied or terminated were, in fact, not eligible for program benefits.

The Act (Section 16(e)) specifies that quality control means monitoring and reducing the rate of errors in determining basic eligibility and benefit levels. The Department proposes to continue defining the objectives of quality control as providing: (1) A systematic method of measuring the validity of the food stamp caseload at a given point in time; (2) a basis for determining National rates of ineligibility, incorrect allotments, as well as rates for households wrongfully denied or terminated; (3) a continuing flow of information between the States and FNS necessary to develop the solution to problems in program policies and procedures; and (4) a basis for assisting State agencies in improving and strengthening program operations by identifying deficiencies. In order to realize these objectives, the Department proposes that the review process continue to consist of: (1) Case assignments and completion monitoring; (2) case reviews; (3) supervisory review of completed worksheets and schedules; and (4) transmission of completed worksheets and schedules for centralized data processing and analysis.

Sampling

Sampling is a valuable tool for obtaining sound quantitative information concerning Food Stamp Program operations quickly and accurately. When a sample is designed and carried out in accordance with probability theory, results obtained from the sample may be generalized to the total group from which it is drawn.

The Department has long recognized the value of probability samples in food stamp quality control. This section of the proposed regulations is in large part a consolidation and refinement of existing policies, procedures, and instructions. With this consolidation, the Department hopes to provide a clearer understanding of its minimum requirements, enhance the awareness of options available to State agencies, and establish uniform criteria for approving deviations from the recommended options.

Sampling plan. Because of the continued importance of quality control data in the development of corrective action to reduce program and participant loss, and because of its added importance to the distribution of additional administrative funds, it is incumbent upon the State agency to be able to demonstrate the integrity of its sampling procedures. The proposed regulations require that all sampling procedures used by a State be fully documented and available for review by FNS. This documentation would be expected to include but need not be limited to: (1) Step-by-step descriptions of the construction of the sampling frame and any supplemental lists including the source of each list, the date on which lists are compiled or are available for sample selection, the order of sampling units within each list, measures of the accuracy and completeness of each list, and procedures for eliminating cases not subject to review or listed in error; (2) sample selection processes including the estimation of caseload size, the determination of an appropriate overpull, the computation of sampling intervals and the determination of random starts when using systematic sampling, the application of selection procedures to identify sample cases, and any adjustments for over- or undersampling; and (3) any checks and controls established by the State to monitor the selection and assignment of sample cases. Thorough documentation in sufficient detail to reconstruct the sampling process will help ensure adequate coverage of the target population and minimize the possibility of systematic bias.

The proposed regulations also require that each State agency prepare and submit a sampling plan for approval by FNS. This document will serve as the foundation for FNS review of quality control sampling procedures. This plan is basically a distillation of the documentation described above and must include a complete description of the sampling frames, methods of sample selection, and methods for estimating characteristics of the population and their sampling errors.

In addition, the sampling plan must describe the relationship, if any, between the food stamp quality control sample design and other Federally mandated quality control samples (e.g., Aid to Families with Dependent Children (AFDC) or Medicaid). The Department, in cooperation with the Department of Health, Education, and Welfare and the Office of Management and Budget, is developing consolidated sampling and review procedures for food stamp, AFDC, and Medicaid quality control. The short-term goal of this effort is to offer States the option to realize the savings possible from a limited integration of the three programs within existing constraints. In the long run, as the Departments and States gain experience and reconcile differences in program requirements and definitions, the Department hopes to enable every State to benefit from the cost reductions of consolidation. The Department also believes that this approach will provide more accurate information about multiprogram participation and the interrelationship of food stamp, public assistance, and Medicaid errors.

Although States have always had the option to propose a variety of sample designs, the Department has generally recommended the use of a systematic sample because of the ease with which it can be administered. A systematic sample is also responsive to variations in the caseload over the course of a reporting period. (A systematic sample selects individual cases from a sample frame at equally spaced intervals. The size of the selection interval is dependent upon the estimated size of the universe and the required sample size.)

The Department is increasingly aware, however, of special conditions and local constraints which tend to dictate the use of alternative techniques. The proposed regulations (and forthcoming Instructions) should enchance the awareness of alternate sample designs and the situations in which they may be most effective. An alternate sample design would be incorporated into the State's quality control sampling plan and must be approved by FNS before being put into operation. An alternate proposal must specify the advantages over current sampling procedures and meet the following criteria:

(1) Conform to principles of probability sampling (i.e., each unit in the population must have a known, non-zero probability of selection, and computational methods of estimation must lead to a unique estimate for each sample);

(2) Describe methods for estimating characteristics of the population and their sampling errors;

Provide population estimates with the same or better precision as would be obtained by a sample random design;

(4) Described the effect of the proposed sample design on required data analysis and reporting; and

(5) Maintain current effort in other phases of the quality control process (e.g., case reviews, statistical reports, and data analysis).

All sampling plans and substantive changes in previously approved sample designs, frames, or procedures are subject to FNS approval.

Universe. A universe consists of all units for which information is desired. The delineation of the target population is important in that it defines the scope of possible statistical inferences beyond the sample. Segments of the population

which are not subject to sample selection must also be excluded from any conclusions drawn from the sample results. The proposed regulations define two universes, excluding from each a limited number of households not usually amenable to quality control review.

Historically, the Department has defined the *active* universe to include only those households which participate in the Food Stamp Program. Households who were certified eligible to participate but choose not to receive the coupon allotment to which they were entitled were not subject to quality control review. Because the elimination of the purchase requirement is expected to remove a major barrier to participation by eligible households, the Department considered redefining the active universe to include households certified eligible to participate during a review period whether or not they availed themselves of that opportunity. The Department believes, however, that households who decide not to participate may do so because of a change in their circumstances which reduces their need for assistance. Rather than measuring a potential loss and artificially inflating the allotment error rate in such cases, the proposed regulations continue to exclude non-participating households from the active universe.

The remaining exclusions from the active universe are generally continued from previous FNS Instructions. The proposed regulations exclude: households in which all members die or move out of the State prior to the quality control review because of the requirement for a personal interview; households who received benefits by a disaster of 60-day continuation certification; households under investigation for Federal or State benefit program fraud, including households with pending fraud hearings, in order to avoid jeopardizing an ongoing investigation; households appealing a Notice of Adverse Action when the review date falls within the time period covered by continued participation pending the hearing since the basis of the household's participation is known to be in contention; and households receiving restored benefits in accordance with § 273.17 of Food Stamp Program Regulations, but who were otherwise ineligible.

The proposed regulations define the *negative* universe to include households whose application for food stamps was denied or whose certification was terminated during the review period. It excludes those which were closed due to the expiration of the certification period, those which withdrew a signed application prior to the State agency's determination, those which were under investigation for fraud, and those in which, at the time of the review, all household members had died or moved out of State. The definition of a negative action does not include actions taken to change a household's food stamp classification from nonassistance to public assistance or vice versa.

Frame. A frame is a list of all units from which a sample is actually selected. The choice of a sampling frame depends upon the criteria of timeliness, completeness, accuracy, and administrative burden. It may take a number of physical forms, including lists of redeemed ATPs, mail issuance records, or computer files of certified households. The regulations propose that States electing to use a list of certified households to select the active sample must exclude those households which do not participate and must supplement it with those households which are certified eligible after the frame has been compiled and participate during the sample month.

The content of the frame is intended to equal or approximate the universe definitions described above. Complete coverage must be assured so that every household subject to quality control review has a known (non-zero) chance of being selected for the sample. Failure to ensure complete coverage can introduce a systematic bias into the sample results.

A frame may also include cases for which information is not desired, e.g., households which have been certified but did not actually participate during the reporting period, active households selected more than once during the reporting period, or households incorrectly listed in the frame. When such cases cannot be eliminated from the frame beforehand and are selected for the sample, the proposed regulations require that they be reported as not subject to review.

The Department believes that the details of frame construction are best addressed within the administrative structures of each State agency. The proposed regulations specify that the documentation of the active and negative sample frames composition and construction must be available for review by FNS. Furthermore, the sampling plan submitted to FNS for approval must include a complete description of the sampling frames, including the source of the lists, their accuracy and completeness, their form and structure, the frequency of updating, the proportion of cases listed in error or not subject to review, and methods for deleting unnecessary listings.

Sample size. The proposed sample sizes contained in these regulations are based upon considerations of the precision required to plan corrective action and to determine the States' eligibility for additional administrative matching funds balanced by the administrative feasibility of completing the requisite number of sample reviews.

Under the current quality control procedures, a State's semiannual sample size from the active universe is determined by the estimated size of its monthly participating caseload. The active sample ranges from a minimum of 75 reviews to a maximum of 1,200 reviews for States with fewer than 5,000 monthly participating households and more than 40,000 monthly participating households, respectively. This procedure effectively distributes the sample so that more is required of large States than of small States. The proposed regulations maintain this aspect of the current program while introducing an additional factor: the cumulative allotment error rate as defined in § 275.12(b)(1)(iv) of the proposed regulations. The proposed sample size determination are structured so that, for States of approximately equal size, larger quality control samples are required in States with higher error rates.

The Department is proposing to eliminate the current sample size table and substitute a formula for the determination of a State's active sample size. With the current table, large step increases between the required sample sizes have caused abrupt and substantial increases in quality control workloads. For example, if the estimated caseload increased from just under 40,000 to slightly over 40,000, the required sample size had to be increased from 800 to 1,200 cases. The revised procedures will adjust the active sample size in proportion to changes in the State's caseload and cumulative allotment error rate. This procedure is similar to the approach taken in AFDC quality control. In addition to smoothing abrupt changes in the sample size, it should facilitate the coordination and integration of sample selection procedures.

The formula for computing the acvtive sample size was determined by fitting an equation to the sample sizes of Table 1.

Table 1.—*Basis for Determining Semiannual Sample Sizes for Active Cases*

[Average Monthly Caseload]

Cumulative allotment error rate	Less than 10,000	10,000–19,999	20,000–29,999	30,000–39,999	40,000–49,999	50,000 and over
Less than 5.0	150	200	300	500	700	900
5.0–9.9	200	250	400	600	800	1,000
10.0–14.9	250	300	500	700	900	1,100
15.0–19.9	300	400	600	800	1,000	1,200
20.0–24.9	350	500	700	900	1,100	1,300
25.0 and over	400	600	800	1,000	1,200	1,400

The Department proposes that the required sample size for States using a systematic or simple random sample will be computed from the following equation:

Equation 1.
n(active)=17.25p+0.01725N−110 where n(active) is the required active sample size; p is the cumulative allotment error rate as defined in § 275.12(b)(1)(iv), expressed as a percentage of all allotments issued to active sample cases; and N is the anticipated average monthly participating caseload subject to quality control review during the upcoming reporting period.

If the result of Equation 1 is a sample size less than 150 or more than 1,400, the Department proposes minimum and maximum required samples of 150 and 1,400, respectively. In order to ensure that very large States will be able to reduce the active sample size with reductions in the cumulative allotment error rate, any State in which the anticipated average monthly participating caseload is greater than 60,000 households may substitute N=60,000 in Equation 1.

If this proposal had been in use during the July–December 1977 quality control reporting period, the active sample would have been smaller in 36 States, larger in 17, and unchanged in 1. Most States would have experienced a change of no more than 100 reviews, minimizing the proposal's initial effects on staffing patterns. The potential exists, howerver, for substantial reductions of sample size with reductions of the cumulative allotment error rate.

The procedures for determining the negative sample size in the proposed regulations parallel those for the active sample. Currently, the negative sample size is based on the estimated number of negative actions for the year ending with the review period. The samples range from 75 reviews in States with fewer than 5,000 annual negative actions to 800 reviews in States with more than 27,000 annual negative actions. The proposed procedures substitutes an equation for the sample size table, modifies the caseload estimates to the number of monthly negative actions, and adds the negative case error rate (defined in § 275.13(b)(1)(iv) of the proposed regulations) as another factor in line with the active sample size determination.

The formula for computing the negative sample size was determined by fitting an equation to the sample sizes of Table 2.

Table 2.—*Basis for Determining Semiannual Sample Sizes for Negative Cases*

[Average Monthly Cases]

Negative case error rate	Less than 500	500–999	1,000–1,499	1,500–1,999	2,000–2,499	2,500 and over
Less than 5.0	150	200	300	400	500	700
5.0–9.9	200	250	350	450	600	800
10.0–14.9	250	300	400	500	700	900
15.0–19.9	300	350	450	600	800	1,000
20.0–24.9	350	400	500	700	900	1,100
25.0 and over	400	450	550	800	1,000	1,200

The Department proposes that the required sample size for States using a systematic or simple random sample will be computed from the following equation:

Equation 2. n(negative)=14.38p+0.275N−77

where n(negative) is the required negative sample size; p is the negative case error rate as defined in § 275.13(b)(1)(iv), expressed as a percentage of completed negative quality control reviews; and N is the anticipated average monthly number of negative cases which are subject to quality control review during the upcoming reporting period.

if the result of Equation 2 is a sample size less than 150 or more than 1200, the Department proposes minimum and maximum required samples of 150 and 1200, respectively. In order to ensure that large States will be able to reduce the negative sample size with reductions in the negative case error rate, any State in which the anticipated average monthly number of negative cases is greater than 3000 may substitute N=3000 in Equation 2.

As in the active sample, the potential exists for substantial reductions of sample size with reductions in the negative case error rate, although the initial effect on staff requirements is minimal. If the proposed procedure had been in effect during the July-December 1977 quality control reporting period, the negative sample size would have been smaller in 43 States, larger in 10, and unchanged in 1.

The State's determination of an appropriate sample size from the active and negative universes requires an estimate of the monthly number of active or negative cases subject to quality control review. Since the average monthly number of cases must be estimated at the beginning of each reporting period, unanticipated changes in the size of each universe could result in the need for adjustments to the sample size. Excessive oversampling or undersampling may be corrected during a reporting period provided that the corrections introduce no bias to the sample data. Procedures for making such corrections will be included in forthcoming FNS Handbooks.

The Department recognizes the difficulty of accurately predicting caseloads. The proposed regulations contain a provision to account for this uncertainty. States would not be penalized if the actual caseload during a reporting period is less than 20 percent larger than the estimated caseload used to determine the semiannual sample size. ("Actual caseload" may refer to caseload estimates based on data collected during the course of a reporting period). If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload would be used in computing the sample completion rate.

The cumulative allotment error rate and the negative case error rate needed to determine the active and negative sample sizes would be those reported in

the most recently completed quality control sample. Since review activity would almost certainly extend beyond the end of each reporting period, the error rate from the immediately preceding reporting period may not be available prior to the beginning of the next period. Consequently, for any October-March reporting period, error rates would come from the previous October-March period; for any April-September reporting period, error rates would come from the previous April-September period.

Equations 1 and 2 yield the minimum number of active or negative cases subject to review which must be selected each six-month reporting period. They are based on an assumption that most States will use a systematic or simple random sample. Some States may be able to obtain results of equivalent statistical reliability with a smaller sample in conjunction with an appropriate sample design. The Department proposes to give States this option, subject to FNS approval. To receive this approval, proposals of sample designs other than systematic or simple random sampling must provide population estimates with equivalent or better precision than would be obtained by a simple random design with the specified sample size from Equations 1 or 2.

To implement these proposals, the Department proposes to base the initial quality control sample sizes on reported error rates from the January-June 1978 reporting period until more current data are available. The cumulative allotment error rate would be defined for this purpose as the sum of the absolute values of the basic program ineligibility, overissuance, and underissuance bonus dollar error rates as reported to FNS on Forms FNS–247–1 and FNS–247–2. The basic program ineligibility error rate would include the value of bonus dollars issued to households which do not meet basic financial and other program eligibility criteria but would exclude work registration and procedural errors. The negative case error rate would be defined as the proportion of invalid decisions, excluding those attributable to procedural errors, as reported to FNS on Forms FNS–247–1 and FNS–247–3. These would serve as close approximations to the definitions in § 275.12(b)(1)(iv) and § 275.13(b)(1)(iv) of these proposed regulations.

Sample selection. Although the quality control samples cover a six-month period, sample cases are selected separately from the active and negative frames each month. Substitutes are not acceptable once a household has been identified for inclusion in the sample by a predesigned probability sampling procedure.

A quality control review is most effective and most accurate when made soon after the review date. When reviews are deferred for long periods of time, information is frequently more difficult or more time-consuming to obtain. In some instances, e.g., when households in migrant labor areas cannot be located or when households entered the program during a strike and are no longer willing to give information, the review may be impossible. If reviews are to be made as early as possible, the selection of sample cases must also be made promptly. The Department has proposed that this selection should be made no later than the 15th day of the month following the sample month.

The use of supplemental lists of cases may expedite the sample selection process. For example, a segment of the monthly frame or list might be created early in the sample month, and sample cases could be selected and reviewed almost immediately. At the end of the month, the frame would be extended by adding those households not included in the earlier segment, and the selection of sample cases would be continued.

Sample completion. A potential source of bias lies in cases for which required reviews are not completed because, for example, the household could not be located or was unwilling to supply the necessary information. If the number of non-responses is small, any resulting bias would also probably be small. If the number of such cases is large, however, a considerable bias may be introduced, and there is no assurance that conclusions drawn from the sample apply to the total caseload. To minimize the potential bias from nonresponse, these regulations propose a completion standard of 95 percent of both the active and negative quality control samples. This percentage is the ratio of the number of completed reviews to the number of cases selected subject to review or to the minimum number of cases subject to review computed from the sample size equations, whichever is larger. This completion standard will be applied separately to the active and negative samples. A State's entitlement to the increased Federal share of administrative costs under § 275.26(c) of the proposed regulations would depend on the satisfactory completion of at least 95 percent of the required active case reviews.

Reporting requirements. In preparing these proposed regulations, the Department examined the current quality control reporting burden and explored several means of reducing data submission requirements that would still ensure access to necessary management information. The Department currently requires a monthly status report (Form FNS–248), a subsample of the basic worksheets and coding documents (Form FNS–245), and a semiannual summary report of the quality control results (Forms FNS–247), from each State agency. The proposed regulations would eliminate the preparation and submission of Forms FNS–247 and FNS–248 by requiring States to submit the edited results of all quality control reviews as coded on the Data Sheet of Form FNS–245. These data would be submitted to FNS on a machine-readable medium (i.e., magnetic tape or punched cards) in a format to be specified in forthcoming FNS Instructions. The proposed regulations maintain the current 90 day reporting deadline. To ensure timely submission, data received by FNS more than 90 days after the end of a reporting period will not be processed and will not be included in the State's completed quality control sample, thus resulting in a lower completion rate.

Review of Active Cases

Review date. A sample of households which participated in the Food Stamp Program during the sample month will be selected for QC review. The Department proposes to continue using as the review date for active cases the first day of the sample month or the day of certification, whichever is later. Retention of this review date will enable quality control to gather information about the cases reviewed both at the time of certification and subsequent to certification.

Review process. Most of the actual review process, i.e., the case record review, interview with the participant, verification of information, using secondary sources where necessary and the determination of eligibility and correctness of basis of issuance, is essentially unchanged and has been included in the regulations as it currently exists in FNS Handbooks. As proposed, the reviewer will examine and verify, as of the review date, all elements of eligibility specified in Part 273 of the new regulations. The reviewer will follow the certification policy on income averaging as defined in § 273.10(C)(3). When evaluating what information to use for the sample month relative to income, changes in household composition, changes in residence and shelter cost, and resources, the reviewer will follow closely the requirements on

reporting, sending a Notice of Adverse Action and State agency action taken to effect a change as outlined in § 273.12 and § 273.13.

There is a significant change in the proposed handling of PA income which the reviewer finds to be incorrect in the review month. Under the former regulations households in which all members were included in a federaly aided public assistance or general assistance grant were considered categorically eligible for food stamp benefits. Specifically this meant that, if otherwise eligible (relative to non-financial eligibility criteria), these households were eligibile to participate in the program without regard to the income and resources of the household members.

The quality control review of PA food stamp households was made within the constraints of categorical eligibility. If the QC reviewer found a PA house hold in which income or resources exceeded the allowable standards but the household was otherwise eligible, then no eligibility error was coded. The QC reviewer computed the basis of issuance using the household's income, including PA income, as received. The amount of the PA grant was not questioned since the reviewer could not question the financial eligibility of the PA case.

Under the Food Stamp Act of 1977 categorical eligibility of PA households is abolished and these households are required to met all the eligibility requirements that nonassistance households must meet. Now that quality control can review all the financial aspects of a PA case the amount of the PA grant is no longer inviolate. The QC reviewer will have information available, for example the existence of unreported earned income, that should affect the size of the PA payment. The Department is proposing that food stamp quality control reflect food stamp basis of issuance by taking into account the difference between the level of benefits acutually provided and the level of benefits that would have been provided if the income had been fully known and the PA grant had been computed at the correct level.

This proposal reflects the Department's firm intent to cooperate in the ultimate integration of the public assistance and food stamp QC systems, including determining error rates jointly. As a first step the Department is proposing this approach relative to income determination. The Department is moving toward a total integration of the review of all other eligibility aspects of the two programs.

This proposal also reflects a concern with "overcounting" errors in PA food stamp cases; i.e., using an error in a PA payment to determine the degree of error existing in the food stamp case. If the same PA error is coded in the PA portion of the case then one program's error could be used for two claims against the household.

In making this proposal, the Department considered three possible ways the food stamp reviewer could obtain the correct PA grant. First, States may consolidate PA and food stamp quality control sample selection and review procedures. To take advantage of the overlaps between the PA and food stamp recipient populations, a sample of cases which participate in several programs is selected and reviewed simultaneously for each program. The PA grant may be recomputed during the course of the joint review.

A number of States have developed an integrated sample design and conduct joint AFDC and food stamp quality control reviews. The current procedures to identify households for joint review, however, would not be sufficent to identify all households receiving a PA grant. Generally, the households identified for joint review are limited to those in which every member of the food stamp household is included in the PA grant or those in which the food stamp and PA household head are identical. Mixed households (those in which some but not all members of the food stamp household are receiving a PA grant) may not be identified by either of these procedures. Because the proposed recomputation procedures apply to every PA grant in error, States would have to develop a means of identifying households which receive PA grants.

Second, the food stamp QC reviewer could compute the PA grant first and then compute the food stamp benefits; this assumes all food stamp QC reviewers know both programs well and are prepared to be multiprogram reviewers.

Third, the QC reviewer could send the case to an AFDC QC reviewer or eligibilty worker, request a recomputation of the grant and a return of the case record. If this method is used the State would have to ensure that a minimum amount of time is lost in the transferring back and forth of the record and that the AFDC staff cooperate fully with the food stamp QC reviewer.

Of these three possibilities, it is the Department's opinion that the first is the most feasible administratively. Unless a State is consolidating PA and food stamp QC sample selection and review procedures, recomputation of the PA grant does present some problems. The recommendation of the PA grant for food stamp QC purposes would thus be greatly facilitated by this consolidation. The Department is seeking comments on how States plan to obtain the corrected PA income figure.

The household case record review continues to consist of an analysis of the household's case record, completion of the case record sections of Form FNS–245 and planning the field investigation. As proposed, the reviewer will continue to conduct a field investigation for all active cases selected in the sample; the field investigation will include interviews with the head of household, spouse, authorized representative, or any other responsible household member, and contact with collateral sources of information. Relative to the personal interview, the Department proposes that the reviewer notify the participant prior to making the home visit. This would avoid causing any inconvience to the participant and would ensure that the participant is at home when the home visit is made. The Department feels that due to the scope and importance of the interview with the participant the interview cannot be accomplished by phone.

The Department is proposing to allow an exception for the field investigation requirements in those parts of Alaska considered inaccessible during some seasons, if it is impossible due to geography and weather, to conduct a field investigation. In such cases, the reviewer would be required to provide justification.

As proposed, when adequate verification is not available from the participant the reviewer will obtain verification from collateral contacts and document all verification thoroughly. The Department is concerned that participant information be treated as fairly and objectively as possible; if collateral verification differs from that given by the participant, then the Department is proposing that the differences be resolved by the State agency prior to corrective action being taken. The Department does not want to lengthen the completion time for a review, but it does want to give the participant and the State an opportunity to resolve conflicting information and, if possible, to do so before an error is reflected in the cumulative allotment error rates. If, prior to the end of the reporting period, the QC information is found to be incorrect, then no error or an error in a different amount would be reflected in the error rates. If the QC

information is not disproven, then that information and the resultant error would be reflected as originally reported by the QC reviewer.

The question of who should resolve the conflicting information, the eligibility worker or the QC reviewer, is left to the States' option in this proposal. The Department realizes that this proposal could impact on staff time and utilization and consequently is requesting comments on how the States think this could best be handled.

Identification of errors. There have been substantial changes in this area and the Department has proposed several new concepts relative to the handling of errors. All elements which vary (are in error) in error cases would be listed without assigning priorities. Previously, the QC reviewer has coded the primary and secondary causes of error on Form FNS–245. This has always introduced the element of reviewer judgment, i.e., what are the primary and secondary causes of errors. With the new Act the primary error will often be impossible to identify when two or more deductions and/or income elements vary. The reason for this is the relationship between child care and excess shelter and income and excess shelter. Due to the $80.00 limitation on the combined allowances for child care and excess shelter costs, the variance of both in a given case can produce various effects on net income, depending upon the amounts and directions of the variances. The coding of all errors will substantially reduce the element of reviewer judgment in such situations. In addition, this approach will optimize the use of State agencies' data analysis techniques such as error-prone profiles, as described in § 276.16, since correlations between elements in error and other household variables can be determined and appropriate preventative or corrective action taken based on reliable information. States will be able to evaluate all errors in an error case rather than selected errors. Adoption of this proposal necessitates two further changes. First, the QC reviewer could not terminate the review when the case is found to be ineligible; to capture all error information the basis of issuance computation would have to be completed so that all elements in error can be identified. Second, the determination of agency/participant responsibility would have to be coded for each element in error in order to facilitate the development of corrective action through error-prone profile analysis. The Department is also proposing to allow States the option of designating, for their own purposes, a primary error, if they have met the requirements for listing all elements in error.

Eligibility errors. The Department proposes to continue to code the occurrence and amount of an eligibility error if the reviewer determines that an active case is ineligible. While the Department proposes to code all error elements, if a case contains both an eligibility error and a basis of issuance error then the eligibility error would continue to take precedence over basis of issuance errors for coding purposes.

Basis of issuance errors. The Department is proposing that if the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in an amount exceeding $5.00, then the occurrence and amount of the basis of issuance error would be coded on the data sheet of Form FNS–245. The establishment of an individual case tolerance of $5.00 for use in determining when a basis of issuance error exists in reviewed cases was predicated on changes contained in the new Act. With the elimination of the purchase requirement by the new Act, the amount of bonus issued to a household will be determined by subtracting a constant percentage of the net food stamp income from the total allotment. This could have resulted in a basis of issuance error every time the certification worker's computation differs from the quality control reviewer's even if the difference is as small as $1.00. In the past, these variations have been absorbed by the margins inherent in the basis of issuance tables, which contained a range of $10.00 to $30.00. The Department feels that the use of the $5.00 individual case tolerance will lessen the impact of the elimination of the basis of issuance tables and will obviate the need to expend funds to correct minor variations between the reviewer's and the eligibility worker's allotment figures. In addition, the use of the $5.00 individual case tolerance for food stamp QC conforms to HEW QC's use of a $5.00 tolerance and this contributes to the further alignment of the two QC systems.

Error analysis. The Department proposes that when a case is found to be in error the reviewer will continue to determine whether the error occurred at the time of certification or subsequent to certification and whether the error was agency or participant caused. If inadequate documentation in the case record results in the reviewer being unable to determine whether the error occurred at the time of or subsequent to certification and/or who caused it, then the Department proposes that the error be assigned to the State agency. Adequate documentation is clearly required in Part 273 of the regulations and thus lack of it to the point of inability to assign responsibility for errors should result in assignment of responsibility to the State agency.

The Department proposes to continue requiring that all error determinations be reported on Form FNS–245 and that error information be reported to the State agency for action on an individual case basis.

Active case error rate. The Department is proposing that the active case error rate continue to be the proportion of active sample cases which were determined to be ineligible or which received an incorrect allotment, in an amount exceeding $5.00, during the sample period. The cases included in the active case error rate will provide additional data for the error-prone profiles and enhance States' ability to plan effective corrective action.

Cumulative allotment error rate. The Department is proposing that the cumulative allotment error rate include the value of all allotments underissued or overissued in those cases determined to be in error during the sample month. This includes the total value of the allotments overissued in cases found to be ineligible. The Department is proposing that certain errors be excluded in the process of determining which cases will be coded in error for the cumulative allotment error rate. In order to closely follow certification policy in Part 273 the Department proposes to exclude from the cumulative allotment error rate three types of errors which could not have been avoided by the eligibility worker. The first exclusion would be any allotment overissuance or underissuance resulting from variances in the household's gross nonexempt income where there is conclusive documentation (a listing of what attempts to verify were made and why they were unsuccessful) that the household's gross nonexempt income could not be verified at the time of certification. This exclusion is based on the certification policy in § 273.2(f)(1)(i) which states "* * * where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information." While the Department wants to avoid calling an error caused

by the eligibility worker following this policy, it does want the reasons for this exception to verification of income to be thoroughly documented; if it is not, the Department proposes not to allow this exclusion. The second exclusion would be any allotment overissuance or underissuance resulting from an individual being included as a member of a household pending verification of citizenship when the reviewer finds that the individual is not a citizen or an eligible alien. This exclusion is based on the certification policy in § 273.2(f)(2)(ii)(B) which states that "the member whose citizenship is in question shall be allowed to participate for 2 months pending verification of citizenship if the household is otherwise eligible and efforts are being made to obtain the necessary verification."

The third exclusion would be any allotment over or underissuance in those cases certified under expedited certification pending verification procedures, unless such loss is a result of an expedited income accounting, basis of issuance computation, residency, or participant identification error; this refers to the certification procedures for handling expedited service contained in § 273.2(i)(4)(i). This exclusion results in cases certified under expedited procedures being reviewed differently than cases certified under standard procedures. This is based on the fact that, in most instances, States will be precluded from verifying various factors of eligibility and basis of issuance in order to meet the processing requirements of expedited service. The Department proposes to review cases certified under expedited procedures but not to include any dollars lost in those cases in the cumulative allotment error rate, provided the correct certification procedures were followed.

Identification of administrative deficiencies. In addition to the coding of eligibility and/or basis of issuance errrors, the Department proposes that any deficiencies in a case which do not directly contribute to a dollar loss will be identified as administrative deficiencies. What is included under administrative deficiencies has been, for the most part, included in the past under procedural errors and the review of work registration. Currently, procedural requirements are subject to quality control review. Examples of what we have, in the past, considered procedural errors are overdue subsequent certification, unsigned application or no application on file, etc. If one or more of these procedural errors occurred and there were no other eligibility errors in the case, the case was reported ineligible and a bonus dollar loss was reflected. Since eligibility errors always take precedence over basis of issuance errors a case with both a procedural error and a basis of issuance error would have been coded ineligible based on the procedural error. The review of work registration currently encompasses administrative or procedural requirements as well as program eligibility standards. The eligibility standards relative to work registration which are required by the new legislation are that each household member who is not exempt, as defined in § 273.7(b), must: (1) Register for employment at the time of application and once every 6 months after initial registration; (2) report for requested interview at the State employment office; (3) respond to a request from the employment office for supplemental information; (4) report to an employer to whom referred by the State employment office; (5) accept a bonafide offer of suitable employment; and (6) not voluntarily quit suitable employment to which referred by the State employment office. In addition to these standards there are some inherent administrative requirements that the eligibility worker must meet such as: (1) Ensuring that a work registration form is on file in the case record or office when required; (2) ensuring that all exempt household members are fully aware of their responsibilities to report any change in their status; (3) correctly determining if any household members meet any of the exemptions, etc. Under the current procedures when an error occurs in either eligibility or administrative work registration requirements the case is reported as ineligible and a dollar loss recorded.

The Department is proposing to continue reviewing both procedural and administrative work registration requirements under the quality control system but to report them as administrative deficiencies rather than reflecting them as errors in eligibility with a corresponding dollar loss. This proposal recognizes that the tolerance limit set by the Act is much more rigid than the existing standard. The current tolerance limits described in FNS(FS)Handbook 302 apply to incidences of cases in error and the limits are applied separately to eligibility, overchanges, underchanges, overissuances and underissuances. The limits are set at 3 percent for eligibility errors and 5 percent for each type of basis of issuance error. The new legislation establishes that the tolerance limit apply to the dollar value of allotments issued in error with the limit being set at less than 5 percent for the dollar value of all combined allotment error rates. The Department's proposal also clearly meets the intent of Congress. As stated in the House Report, the Committee does not expect "the Secretary or the States artificially to increase error rates by including errors associated with administrative complexities or procedures, such as lack of a work registration card in a file or the need for a signature or some minor item on a particular form, none of which may have any impact on allotments." (Report No. 95–464 on H.R. 7940, June 24, 1977, p. 363). Although the Department does not want to "artificially increase" the error rate, especially considering the more rigid tolerance limit, it does want to continue collecting and reporting statistically reliable data by which to measure compliance with important administrative standards. The reporting of administrative deficiencies, rather than eligibility errors (due to administrative causes) and attaching no dollar loss, accomplishes this goal.

To provide better guidance to the State agencies and to accurately reflect requirements in the new act, the Department has proposed to include additional examples of administrative deficiencies, such as insufficient documentation, inadequate verification of those elements required to be verified in Part 273, excessive verification and inadequate documentation of each household member's work registration status. The Department is also proposing to include as administrative deficiencies the incidence of the errors excluded from the cumulative allotment error rate as described above in the preamble. These errors which could not have been avoided by the eligibility worker and are thus administrative in nature. However, the Department feels that State agencies should have this information so they can be sensitive to problems in these areas. The Department is proposing that all information on administrative deficiencies be reported to the State agency for action on an individual case basis. In addition, the Department is considering setting limits on the level of occurrence of certain specific administrative deficiencies, such as lack of work registration form on file or overdue recertifications. Ideas and comments are solicited regarding this issue.

Identification of discrepancies. The Department proposes to continue to identify as a discrepancy that part of a variance between the eligibility worker's and the reviewer's figures which results from a change after the

review date. In addition, the Department is proposing that this information be reported to the State agency for appropriate action on an individual case basis.

Disposition of case reviews. The Department proposes to continue to require that each case in the sample of active cases be accounted for by classifying it as completed, not completed, or not subject to review. Situations when cases will be reported as not completed would remain unchanged with one exception. The reviewer would no longer code the case as incomplete if the household moves to another project area within the State; the Department proposes in that instance that the review be completed. It should not be difficult to complete a case review if a participant moves within the State and this will increase the chance of the State attaining a high completion rate.

The list of situations when a case is not subject to review is basically unchanged with one exception. The Department is proposing to review cases in which there is a Notice of Adverse Action to reduce or terminate program benefits if the review date falls within the time period covered by such notice; currently these cases are not subject to review. It is the Department's opinion that these cases can be reviewed; the reviewer would simply take into acccount the time periods for reporting, sending a Notice of Adverse Action, and State agency action. In addition, to avoid reviewing a case under investigation for any program fraud or a household which has a pending fraud hearing, the Department is proposing that a case is not subject to review if, at the time of the review, the household is under investigation for Federal or State benefit program fraud or has a fraud hearing pending; currently this is limited to food stamp or public assistance fraud.

Review of Negative Cases

Review date. The Department proposes that the review date for negative cases continues to be the date of the agency's decision to deny or terminate benefits.

Review process. Currently, the review of negative cases is limited to determining: (1) The correctness of the stated reason for denial or termination; and (2) whether a Notice of Adverse Action was sent. When a determination relative to the correctness of the reason for denial or termination cannot be made from a review of the case record or a collateral contact, a field investigation is conducted to obtain verification from the household and/or collateral sources to determine the correctness of the reason for denial or termination. For those cases in which the decision to deny or terminate is found to be invalid, the cases are currently coded in error. However, a determination as to whether the household is, in fact, eligible or ineligible for any other reason is not currently made. The Act specifies that a quality control plan will indicate the actions a State proposes to take "in order to reduce * * * the incidence of invalid decisions in * * * denying eligibility." The Department wants a quantitative measure of service delivery to participants, as well as information for the development of error prone profiles. Consistent with this, the Department proposes to expand the review of negative actions to give negative cases equal status with active cases in terms of planning, evaluation and monitoring effective corrective actions. For those households in which it is determined that the stated reason for the adverse action was invalid, the Department proposes that we go one step further and determine the actual status of the household's eligibility at the time of denial or termination and, if eligible, arrive at the specific allotment to which the household was entitled. Consistent with the expansion of this review the Department is using the term "negative case" rather than "negative action."

The Department proposes that the review will consist of a case record review, a field investigation, if required, an analysis of errors, and a determination of the number of administrative deficiencies existing in the negative case. As proposed, the reviewer will examine and verify the household's eligibility or ineligibility, as of the review date. The reviewer will also analyze the household's case record, completing the household case record sections of Form FNS–245 and plan the field investigation if necessary. When the case record provides acceptable verification that the household is ineligible, a field investigation would not be required. If the case record alone does not prove ineligibility, the reviewer may be able to verify the element(s) in question through a phone call to a collateral contact designated in the case record. The Department proposes that when neither the case record nor a collateral contact proves the household's ineligibility, then a field investigation would be conducted to determine the status of the household's eligibility at the time the decision to deny or terminate was made. The field investigation would include an interview with the household and, if ineligibility still cannot be proven, verification through further collateral sources of information. Relative to the personal interview the Department proposes that the reviewer notify the household prior to making a home visit. This would avoid causing inconvenience to the household and ensure that the household member is at home when the home visit is made. As proposed for negative cases, the reviewer would terminate the field investigation at any point when the household's ineligibility is proven. If ineligibility is not proven through a partial field investigation then a full field investigation, including examination and verification of each element of eligibility would be necessary. The Department proposes that for those households which were eligible, a coupon allotment be computed based on the household's status at the time of the decision. The Department feels that this will provide a more quantitative measure of service delivery and provide valuable information for data analysis purposes, such as error-prone profiles.

The Department does not anticipate that this review will require the hiring of additional quality control reviewers. While we would be expanding the scope of the review where necessary, and States will be required to reach a 95 percent completion rate for case reviews, the impact of the expanded review would be lessened by the proposed reduction in the required negative case sample size. Moreover, it cannot be assumed that a majority of negative cases will require full field investigations to prove ineligibility as of the review date.

Identification of errors. The Department is proposing substantial changes in the area of when a negative case will be reported in error. Currently, an invalid negative action is coded when: (1) The reviewer determines that the reason given by the agency for closing a case or denying an application was incorrect; (2) the reviewer determines that the reason for closure was correct but that the case was terminated prior to issuance or expiration of a properly completed notice to deny or terminate participation, when such notice is required, or prior to a final hearing decision; and (3) the reviewer determines that no reason was given for denial or termination in the case file, or the reason given is unclear. The Department is proposing that a negative case be considered invalid, and an error coded, when the reviewer verifies that a household which was denied or

terminated from the program was, in fact, eligible to participate. When an error is coded, the amount of the underissuance for the sample month would be reported. As with active cases, this information would be reported to the State agency for appropriate action on an individual case basis.

Negative case error rates. The Department proposes that the negative case error rate be the proportion of negative sample cases which were determined to have been eligible at the time of denial or termination based upon the certification policy as contained in Part 273. The cases included in the negative case error rate will provide data for error-prone profiles and enable States to plan effective corrective action.

Identification of administrative deficiencies. In addition to identifying errors, the Department proposes that administrative deficiencies also be identifed. This will allow for the identification of deficiencies in situations where the household is ineligible, for the stated or any other reason, and consequently there is no error in the case. Other examples of administrative deficiencies in negative cases would include, but not be limited to, Notice of Adverse Action not sent, unsigned application, insufficient documentation, no application on file, etc. This information would be reported to the State agency for appropriate action. As with active cases, the Department, in accordance with the intent of Congress previously described, wants to avoid "artificially increasing" the error rate by reporting errors due essentially to administrative complexities. The Department does, however, want to continue correcting and reporting statistically reliable data by which to measure compliance with important administrative standards. Designating such errors as administrative deficiencies accomplishes this goal.

Disposition of case reviews. The Department proposes to continue to require that each case selected in the sample of negative cases be accounted for by classifying it as completed, not completed, or not subject to review. Situations when a case will be reported as not completed will remain unchanged. As an aid to the state reviewer, the Department has given an example of when it would be beyond the agency's control to complete a review, i.e., if it was necessary for the reviewer to interview the household and the household could not be located or refused to cooperate.

The Department has proposed some minor changes to the list of situations when a negative case will not be subject to review. Households which have refused to pay a fraud claim and negative cases with no identifiable application on file would now be subject to review. The Department feels that there is no reason not to review these cases to determine the status of the household's eligibility as of the review date; dropping these cases unnecessarily limits the negative case universe. The Department also proposes to add to cases not subject to review those households which withdrew a signed application prior to the State agency's determination. A voluntary withdrawal would not require a denial on the part of the agency. For the same reasons explained under active cases not subject to review, negative cases will not be subject to review if the case is, at the time of the review, under investigation for Federal or State benefit program fraud; this statement is more inclusive than previously.

Review Schedule

The Department proposes that the current Quality Control Review Schedule, Form FNS–245 continue to be used by the reviewer to record information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance. As proposed, decisions reached by the reviewer will continue to be coded on the data sheet of Form FNS–245 and substantiated by information in the narrative section of this form. Obviously, many of the proposed changes described above in the preamble will impact on the Form FNS–245. For example, for an error case, reviewers would list all elements in error and in both error and non-error cases, where administrative deficiencies occurred, they would be recorded. Form FNS–245 is currently being revised and will reflect the program changes contained in the new regulations.

Data Analysis and Evaluation

In the past, Performance Reporting System Regulations have not provided State agencies with any specific guidance on the development and use of a data analysis and evaluation process. In an FNS Handbook more guidance was provided; however, State agencies felt the requirements for data analysis and evaluation were too detailed and did not provide States with enough flexibility in developing a process best suited to their needs. Therefore, the Department is proposing in these regulations to provide States with minimum rquirements thus allowing flexibility in a State's development of the process.

Data Management

Analysis. The Department is proposing to define analysis as a process of classifying data in order to provide a basis for studying the data and determining trends including significant characteristics and their relationships. As proposed, data could be classified by areas of program requirements or use of error-prone profiles.

Error-Prone Profiles. An error-prone profile is the product of a statistical analysis of quality control data. Its objective is the identification of clusters of cases characterized by particular caseworker, socio-economic, demographic, or other household traits which have a high probability of agency or participant error. In its simplest form, an error-prone profile is a description of characteristics which are strongly associated with errors. With this information, attention can be focused on areas where errors are most likely to occur.

Error-prone profiles are useful tools in the analysis, interpretation, and presentation of quality control data. Quality control reviews generate information about the frequency, type, and source of error in the certification of households for food stamp benefits. The reviews can also collect socio-economic and demographic information that characterizes food stamp households. By combining these two pieces of information, groups of cases or procedures which are likely to be in error can be identified, and the type of error likely to occur can be specified.

Although the combination of characteristic information and error data distinguishes the error-prone profile from other types of analysis, a profile is intended to supplement existing systems of quality control data analysis and corrective action planning. Its value lies in its use as a management tool which can enable more efficient administration of the Food Stamp Program.

Based on the experience of several States and other federal agencies, the Department anticipates that a number of benefits may be gained from the use of error-prone profiles. Corrective actions based on such quantitative data analysis can reduce the rate of case and allotment error in the Food Stamp Program and help ensure that benefits are correctly issued to eligible households. Successive and revised

profiles can be used to maintain low error rates. Error-prone profiles should enable more efficient use of administrative resources by directing those resources to areas where they will be most effective. They can be used to locate weaknesses in regulations, guidelines, and procedures which require revision, special training, or additional supervision of the eligibility workers. They may also be used to evaluate the effectiveness of specific corrective actions.

The proposed regulations require that whenever a State agency prepares an error-prone profile or FNS provides one to a State, the State agency must use the error-prone profile as part of the data analysis process in order to provide a basis for the formulation and evaluation of corrective action.

The Department will support States in the development of suitable methodologies for generating profiles. In recognition of particularly severe resource constraints in some areas, the Department intends to develop a capability to generate error-prone profiles from State-supplied quality control data. These profiles would be transmitted to State agencies for their use in planning and implementing corrective action.

Although quality control is designed to produce Statewide estimates of the frequency and cost of errors, it also can provide useful information about smaller areas within the State. This can occur, for example, when a State's caseload and quality control sample are dominated by a large metropolitan area, when a State elects to modify its sample design or increase its sample size to make more reliable estimates for local areas within the State, or when reviews from several project areas are grouped together for the purpose of analysis.

To help ensure that the quality control sample data are fully analyzed, the Department proposes to require that States examine review findings from project areas with an average monthly participating caseload greater than 35,000 households. This will not require an additional quality control sample, but will entail the isolation and separate analysis of cases which were selected from these projects in the full State sample. The results of this analysis will be incorporated in the State's corrective action planning.

The Department believes that this proposal will significantly improve the analysis of the frequency, type, and source of errors which occur in large metropolitan areas with substantial caseloads and monthly issuances. The 35,000-household threshold will focus this effort on the 20–25 largest project areas which contribute about 40 percent of the total monthly caseload. Improved data analysis and targeted corrective actions in these projects can have a major impact on the cost of certification errors.

Evaluation. The Department is proposing to define evaluation as the process of determining the cause(s), magnitude, and geographic extent of deficiencies in order to provide a basis for planning and developing effective corrective action.

The Department is proposing to require analysis and evaluation at the State and project area levels of all available management information sources. As proposed, this process would include: identification of all deficiencies in program and system operations; identification of causal factors and their relationships; identification of the magnitude of each deficiency; and determination of the geographic extent of each deficiency. The results of this process would provide the basis for management decisions on planning, implementing, and evaluating corrective action.

The Department is proposing to define magnitude as the frequency of each deficiency occurring based on the number of program records reviewed and, where applicable, the amount of loss to the program and participants or potential participants in terms of dollars. In identifying magnitude, as proposed, the State agency would include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable. The identification of the magnitude of each deficiency will provide managers with the information necessary to determine whether the deficiency is to be addressed in the State or Project Area/Management Unit Corrective Action Plan and the extent corrective action measures are necessary. The specific information on frequency of the deficiency occurring based on records reviewed and dollars lost will also aid managers in establishing an order of priority for correcting deficiencies.

The Department is proposing to define geographic extent of a deficiency as a deficiency which is either a Statewide problem or an individual project area/management unit problem. This information will also be necessary for managers in determining whether the deficiency is to be addressed in the State or Project Area/Management Unit Corrective Action Plan and the extent corrective action measures are necessary. The proposed regulations (Subpart E) and the preamble on Corrective Action explain in more detail the Department's proposal on what constitutes a Statewide trend.

The Department is proposing that State agencies utilize all management information sources in the data analysis and evaluation process. The proposed regulations identify those sources which the State agency would be required to use in the process. This list, however, is not all inclusive recognizing other sources of information may be available to the State agency. The use of all information sources available to the State agency will serve to draw together data in order to ensure the identification of problems in all areas of program and system operations and provide a basis for determining causes, magnitude, and geographic extent of deficiencies.

The Department is proposing that in situations where deficiencies are identified but sufficient information is not available (through a review of all management information sources) to complete the evaluation process as required, the state agency will be responsible for collecting additional data to make the necessary determinations. This includes situations when the actual causal factor(s), magnitude, or geographic extent of a deficiency cannot be determined from available management information sources. The action necessary to make these determinations may require discussions with appropriate officials or conducting additional ME reviews (full or partial) in one or more project areas/management units. The Department feels this requirement is necessary to ensure an adequate evaluation of deficiencies when management sources may lack sufficient information.

In the evaluation of data, the Department is proposing that deficiencies be analyzed and evaluated together to determine their causes, magnitude, and geographic extent. The Department is proposing that causes which may be indicated by the reviewer and deficiencies identified be examined to determine if they are attributable to a single cause and can be effectively eliminated by a single corrective action. For example, the following deficiencies have been identified from available management information sources: (1) Failure to reconcile and submit accurate Forms FNS–250 and 256 within the required timeframes (reviewer indicated cause—lack of staff); (2) failure to process retroactive benefit payments in a timely manner (reviewer indicated cause—lack of training); (3) failure to issue ATP's to eligible households within required timeframes; and, (4)

failure to terminate issuance of ATP's to households whose certification periods have expired. In evaluating these deficiencies, a manager determines that a single cause may link these deficiencies. Through proper analysis and evaluation a determination is made that all four deficiencies have one common cause—lack of an adequate computer system. In the first two deficiencies, the reviewers have indicated probable causes. The causes indicated by the reviewers may reflect accurate determinations within the limited scope of the review or circumstances in which the deficiency was detected. Therefore, the evaluation of causes and deficiencies together will provide managers with a method of streamlining resources expended and corrective actions implemented toward correcting one common cause thus eliminating multiple deficiencies. As proposed, deficiencies and causes identified would be compared to the results of past corrective action to determine if the new problems result from causal factors which contributed to the existence of previously identified deficiencies. This comparison may provide for the development of a single corrective action which will eliminate multiple deficiencies.

The Department is proposing that data analysis and evaluation be an ongoing process which will result in the development of effective and prompt corrective action. As proposed, the process would identify when deficiencies have been eliminated through corrective action and provide for the reevaluation of deficiencies and causes when a determination is made that corrective action has not been effective. This action will provide the basis for determinations of when amendments to the State and Project Area/Management Unit CAP's are necessary and when deficiencies can be eliminated from the CAP's.

Corrective Action

The Department is proposing to change the present system of planning and reporting on corrective action in an effort to enable States to concentrate resources on major problems. At presents, States are required to submit comprehensive corrective action plans (CAP's) to FNS every May 1 and November 1. These plans outline the actions States plan to take to correct all deficiencies identified during the reporting period by small project area ME reviews, QC reviews, audits or investigations, or special reviews conducted by FNS. In addition, States are required to submit separate CAP's in response to deficiencies identified by large projeect area ME reviews, and States are also required to submit semi-annual reports on the progress of corrective actions undertaken to implement previous CAP's. While this system has made it possible to monitor States' efforts to correct deficiencies, it has also resulted in the periodic submission of lengthy detailed CAP's which largely repeat deficiencies and proposed corrective actions cited in previous plans.

The Department considers that the paperwork generated by the present system has become burdensome, and the proposed regulations have been designed to reduce the amount of paperwork States are required to submit while still enabling the Department to monitor States' corrective action efforts and to determine whether or not deficiencies are being corrected. Under this proposal, there would be a two-tiered system of corrective action planning. First, each State would submit a CAP to FNS for Statewide or major deficiencies. Secondly, individual project areas/management units would submit CAP's to the State agency for deficiencies which are isolated. Project area/management unit plans would be maintained at the State agency, and the project area's/management unit's actions would be monitored by the State agency. Therefore, in planning corrective action and reporting to FNS, States would first have to determine whether a deficiency requires State agency action, in which case it would be included in the State CAP monitored directly by FNS, or is peculiar to a given project area/management unit and can be corrected at the project area/management unit level, in which case the State would monitor the corrective action but would not report it to FNS.

The Department further proposes that the following deficiencies would require State agency action and would be reported in the State CAP monitored by FNS. The Department is also interested in receiving comments addressing these criteria. (1) States would report deficiencies caused directly by the State agency. These could include such problems as inadequate or incorrect manuals, training materials or operational guidelines; inadequate State staff; problems with a Statewide computer system; or problems with a Statewide mail issuance system. The Department emphasizes that this list is intended to suggest certain types of deficiencies caused at the State level and is not all inclusive. (2) Deficiencies would be included in the State CAP if they constitute a Statewide trend. The Department is proposing to define such deficiencies in two ways. First, Statewide deficiencies would include non-casefile related deficiencies (e.g., inadequate security, failure to conform to outreach requirements, inadequate facilities, etc.) which have been identified from any source(s) as existing at the same time in 25 percent or more of the State's project areas/management units or 25 percent or more of the local certification or issuance offices if the State has only one FNS designated project area/management unit. Secondly, Statewide trends would also include casefile related deficiencies (e.g., application processing, work registration, etc.) when such deficiencies exceed 5 percent of the records sampled during regular ME reviews in 25 percent or more of the State's project areas/management units or 25 percent or more of the local certification or issuance offices if the State has only one FNS designated project area/management unit. States would be required to review constantly the data sources outlined under data management to determine exactly when uncorrected deficiencies constitute a Statewide trend. These standards have been selected because, in the Department's view, they would clearly represent trends within the State but would exclude from consideration purely local or relatively isolated occurrences. The Department has found it difficult to define the concept of Statewide trend and is quite interested, therefore, in receiving State agency comments and suggestions concerning the criteria for determining trends. The Department also solicits comments on the subject of Tolerences within project areas/management units. Since the new corrective action format is being proposed partly to simplify the process of reporting and to reduce the paperwork burden on States, the Department wishes to establish a criterion which will be fair to States while still enabling FNS to monitor widespread problems. (3) Also included in State CAP's would be the causes of overissuance or underissuance of coupons in any reporting period for which the State's cumulative allotment error rates are 5 percent or more. The Department emphasizes, however, that States would not be expected to include in the State CAP those actions taken in response to errors in individual cases identified by QC. This provision complies with the mandate in the Food Stamp Act of 1977 that States not receiving an increased share of administrative costs develop and submit a plan specifying the actions the State proposes to take to reduce its quality

control error rate. (4) Also in compliance with the Act, the Department proposes to include in the State CAP the causes of other errors/deficiencies detected through quality control, including errors in negative cases and administrative deficiencies.

Again, however, the Department emphasizes that actions to correct errors in individual cases shall not be submitted a part of the State plan. In both this area and in Number Three (above), the Department is concerned that States identify and report in the State CAP those deficiencies that contribute to a broad range of QC errors. (5) States would also include deficiencies identified by FNS reviews or by USDA audits or investigations (unless they occur in isolated cases as indicated by FNS). (6) Finally, all patterns of errors identified in large project areas/management units; this would except isolated occurrences of errors as determined by the State. For example, if one or two work registration errors were identified in a large project area, there would be no reason to include this deficiency in the State CAP, since no real pattern would exist.

It must be emphasized that States would still be responsible for correcting all deficiencies, including each case found to be in error by quality control reviews and deficiencies which do not meet the above criteria. However, those deficiencies which occur only in isolated instances and/or are not causing dollar losses to either the program or participants would be included in project area/management unit CAP's. The State would monitor these CAP's to ensure that proposed corrective actions are being taken and are being effective, but these CAP's would not be submitted to FNS. Rather, they would be maintained by the State agency and reviewed by FNS as part of the comprehensive annual review of the State's total operation.

Another significant change being proposed by the Department is in the format of the CAP. All of the individual CAP's presently submitted to FNS would be replaced for Statewide or major deficiencies by a single open-ended plan which, after being approved, would remain in effect until such time as all deficiencies in program operations have been corrected. Since all identified major or Statewide deficiencies would be contained in this one CAP, States would not submit periodic comprehensive CAP's which largely repeat deficiencies and corrective actions enumerated in previous CAP's. As new deficiencies are identified, the State would submit additions to the CAP within 60 days for these deficiencies only; and as reported deficiencies are corrected, they would be deleted from the plan, provided that the State has documented its reasons and FNS has reviewed and validated the correction.

The Department proposes that the following information be included in the State CAP when it is submitted to FNS: (1) A specific description and identification of each deficiency, (2) the source(s) through which the deficiency was detected, (3) the magnitude of the deficiency, if appropriate (frequency of occurrence, amount of dollar loss to either the program or participants, if applicable, and an estimate of the number of participants or potential participants affected by the deficiency), (4) the geographic extent of the deficiency, (5) identification of causal factors, (6) identification of any action already completed, (7) an outline of actions to be taken, the expected outcome of each action, the target date for each action and the date by which each deficiency will have been eliminated, and (8) a description of the manner in which the State agency intends to monitor and evaluate the effectiveness of corrective action in eliminating the deficiency.

The Department considers this information essential to the planning and monitoring of corrective action. First, it is important that the State say specifically what the deficiency is and describe it in detail in order that FNS can analyze the proposed corrective action in relation to the problem and determine whether or not the action is sufficient. Secondly, by knowing the source through which the deficiency was detected, FNS will be able to analyze the magnitude of the deficiency and the priority which the State has assigned to its correction. Also, this information will enable FNS to judge the effectiveness of all aspects of the State's program reporting system. If, for example, one part of the system is consistently failing to identify deficiencies noted by other indicators, it may be that the State needs to make improvements in its system. Thirdly, States would report on the magnitude of the problem, when appropriate, because it is necessary to know the effect of the deficiency on benefits or program losses in order to establish priorities properly. In some cases, it will be difficult to establish a monetary loss (e.g., outreach requirements), in which case States would estimate the effect on potential participants. The fourth requirement, geographic extent, is closely related to magnitude. It is necessary, however, because magnitude of loss or effect will not always show the extent of a problem. A large dollar loss, for instance, may be due to a widespread deficiency which covers several small project areas or to a concentrated deficiency which occurs in a single large project area. Since different corrective actions may be necessary, depending on which of the above situations the State is dealing with, FNS will need this information when reviewing the State's plan. The fifth requirement would be for States to identify the causal factor(s) contributing to the deficiency, because a given deficiency is frequently only a symptom of an underlying difficulty (e.g., inadequate computer system, inadequate staff, etc.). States, therefore, would analyze deficiencies to determine the underlying causes, and the results of this analysis would be provided to FNS for review. With the sixth requirement, identification of actions already completed, FNS will be able to analyze the State's actions and determine whether or not the State's approach is effective. Moreover, if such actions have already had a positive effect, FNS may be better able to estimate the rate at which the deficiency should be corrected.

The most important element in the CAP would be the outline of further actions to be taken. This outline would be in sufficient detail to permit FNS to judge whether or not the proposed action will result in correction of the deficiency. The State would also explain the result it expects each action to have and provide a target date for each action. This information is necessary if FNS is to monitor the corrective action. If the State failed, for example, to comply with a stated target date or to achieve an interim goal established in the CAP, FNS would know promptly that the State was in violation of its plan. In such an instance, the State would be subject to possible fiscal sanctions and would be required to submit a new corrrective action proposal for approval and, following approval, to implement the new corrective action. Without this outline, there would be no way to determine the success or failure of proposed corrective action before the final target completion date, by which time it would be too late to prevent losses due to unsuccessful corrrective action. States would also include the target date for complete correction of the deficiency, so that FNS will be able to determine the final success or failure of the corrective action. Finally, for each deficiency, States would include a plan stating how they intend to monitor and evaluate the efffectiveness of the corrective action in

eliminating the deficiency. This provision will enable FNS to review the State's monitoring of corrective action as part of both the semiannual reviews of corrective action and the comprehensive annual assessment.

Under the proposed regulations, project areas/management units would be required to prepare and submit to the State agency CAP's addressing deficiencies not required to be included in the State CAP. Like the State CAP, these CAP's would be open-ended. Newly detected deficiencies would be included in the CAP within 60 days of identification, and corrected deficiencies would be eliminated from the plan, subject to State and FNS review and validation. The format of the project area/management unit CAP's would be the same as that of the State CAP, and the same information would be included; a description and identification of each deficiency, the source through which the deficiency was detected, the magnitude and geographic extent of the deficiency, and identification of causal factors, an identification of corrective actions already completed, an outline describing actions to be taken, expected outcome, interim target dates and the date corrective action will be complete, and a description of the manner in which corrective action would be monitored and evaluated. This information is the minimum that project areas/management units would be required to provide. State agencies could, however, establish additional requirements which project areas/management units would have to meet in planning, implementing and reporting corrective action.

The Department further proposes that in developing both State and project area/management unit CAP's, States and/or project areas/management units would establish an order of priority for correcting deficiencies by considering the magnitude and geographic extent of the deficiency and the anticipated results of corrective actions. In this way, when several deficiencies are identified which require action, the State agency and/or the project area/management unit will be able to direct its resources to the most serious deficiencies first to ensure correction as soon as possible. In this context "magnitude" refers to the frequency with which each deficiency has occurred in the records reviewed and, where appropriate, the amount of loss in terms of dollars either to the program or to participants or potential participants. "Geographic extent" means the distinction between Statewide deficiencies and those which are project area/management unit deficiencies.

States also would be required to consider the high probability of errors' occuring as identified through management evaluation sources. Moreover, in planning corrective actions, States would coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights training, and outreach activities in order to develop appropriate and effective corrective action measures. The Department considers this requirement to be crucial, because many State agencies are organized in such a manner that Food Stamp Directors have no authority over such important functions as data processing or budgeting. Consequently, CAP's designed entirely by food stamp units are not always carried out in practice. Under the proposed regulations, therefore, it would be necessary for State agencies to ensure that units not under the direct authority of the Food Stamp Director will still be involved actively in the planning and implementation of corrective action.

Finally, the proposed regulations would require systems for monitoring and evaluating corrective action at both the State and project area/management unit levels. The monitoring system would be an ongoing process to determine that CAP's are being implemented, that deficiencies are being substantially reduced or eliminated in an efficient manner, and that the program is providing responsive service to eligible households. The system would combine reports, field reviews and examination of current data available through program management tools and other sources. When the State agency and/or the project area/management unit determines that proposed corrective action has not been effective, the State agency and/or the project area/management unit would promptly reevaluate the problem and develop, propose and/or implement new corrective action. The Department considers monitoring to be especially vital if operations and service are to be improved promptly and efficiently. Through monitoring, States and project areas/management units would be able to judge whether or not a particular corrective action is achieving the desired goal. If the action in question is not being effective, the State and/or project area/management unit would be able to modify its plan immediately, before additional time, and possibly money, is lost. Such measures, therefore, should prove to be cost effectve as well as efficient.

The Department originally considerer revising the corrective action system in the manner explained above prior to the passage of the Food Stamp Act of 1977, and in August 1977 States were invited to comment on the overall design of the system. Twenty-seven States replied, and the overall response was favorable. Some of the unfavorable comments were not opposed to the idea per se but to the possibility that it would be implemented outside the normal rulemaking process. The Department feels this objection is being answered by the present proposed rulemaking. Several States were also concerned about the definition of major deficiencies and Statewide trends. Therefore, the Department has proposed specific guidelines for these areas and, as noted, requests commentors to address these issues particularly.

Responsibilities for Reporting on Program Performance

The proposed regulations would require States to submit to FNS three reports on program performance: (1) ME review reports, (2) QC review reports and (3) the State CAP. These reports are intended to provide the State with an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. In addition, the reports would enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. The proposed regulations would require that all reports be submitted to FNS Regional Offices in duplicate.

ME review reports. The Department is not proposing to change the present system in this area. Under the proposed rules, States would continue to be required to submit to the appropriate FNS Regional Office schedules for the performance of ME reviews. These schedules, covering two years of review activity (January 1 of each even numbered year through December 31 of each odd numbered year), would be submitted no later than November 1 of each odd numbered year. These schedules would be required, further, to ensure that all project areas/management units would be reviewed during the biennial period. To enable FNS to determine that the schedules meet this requirement, the Department proposes that the schedule include the total number of both large and small project areas/management units in the

State and a list of each project area/management unit to be reviewed, by month, beginning with January 1 of the biennial period. On this schedule, States would also identify large project areas/management units. Since States' information on participation is frequently more up-to-date than FNS', it will be necessary for States to provide this information on their schedules. Also, FNS will need to know when each project area is being reviewed in order to monitor overall ME activities properly. For this same reason, FNS needs to be notified of all changes in review schedules.

Finally, for the period between October 1, 1979 (the date that regular ME reviews are resumed) and January 1, 1980 (the date the first review schedule submitted in accordance with the new regulations becomes effective), the Department proposes to have States review the project areas scheduled for review according to the schedule submitted for the period January 1, 1978 through December 31, 1979. For example, if regular ME reviews are resumed on July 1, 1979, States would review the project areas originally scheduled between July and December of 1979. If regular reviews are resumed on October 1, 1979, States would review those project areas designated for review in October, November and December of 1979, and so forth. States would be able to deviate from their 1978/1979 review schedule provided they notify FNS. This policy would permit States to implement their regular reviews without having to develop special schedules for the relatively short period of time preceding January 1, 1980. It also would allow FNS to monitor the States' ME activity.

Quality control review reports. The Department proposes to require States to submit to FNS the edited results of all QC reviews as coded on the Data Sheet of Form FNS–245 no later than 90 days after the reporting period has ended. Data submitted after this date would not be processed and would not be reflected in the State's completed QC sample. The proposed rules do not describe the format for submission of the data, but FNS would specify the format at a later time. Every case selected in both the active and negative samples would have to be accounted for and reported to FNS, including cases not subject to review, cases not completed and cases completed. This proposal conforms to present practice and is being made because the Department considers the data to be necessary if FNS is to monitor the States' QC systems. Such monitoring will be especially important in the event that States qualify for enhanced funding because of low QC error rates, as is mandated by the Food Stamp Act of 1977.

State corrective action plans. As described in the preamble addressing corrective action, the Department is proposing to modify the system of corrective action planning. By October 1, 1979, States would submit to FNS for approval their initial CAP's prepared in accordance with the new food stamp regulations. Once this document has been approved by FNS, States would submit proposed corrective actions for new deficiencies requiring State agency action no later than 60 days after identification. Moreover, in the case of deficiencies requiring immediate attention, FNS could require State agencies to develop, submit and implement corrective action in less than 60 days. The Department anticipates that more stringent time standards would be imposed for deficiencies causing serious dollar loss to the program or participants or seriously impairing service to participants or potential participants.

Program Performance and Adminstrative Cost Sharing

The Food Stamp Act mandates the Department to establish standards for efficent and effective administration of the Food Stamp Program. It is then necessary to measure each State's performance in order to determined that these standards are being adhered to. Under the proposed regulations, two aspects of State programs would be measured: (1) State compliance with the standards contained in the Food Stamp Act and Regulations, FNS-approved State manuals and the State Plan of Operation and (2) State efforts to improve program operations through corrective action. The Department considers the measurement of State performance in both areas to be essential to any determination of State efficiency and effectiveness. Since the Food Stamp Act outlines the basic requirements for the program, compliance with the Act is essential to proper operations. It is equally important for States to comply with the Food Stamp Regulations, since they implement the Act. The State manual and plan of operation must be complied with because, once approved, they constitute the State's agreement to operate the Food Stamp Program and its procedures for doing so. Finally, States' corrective action efforts would be measured because efficient and effective program operation requires elimination or reduction of deficiencies.

The Department proposes to determine efficiency and effectiveness through the following means: (1) Reports submitted to FNS by the States as stipulated at various points in the Food Stamp Regulations (e.g., coupon accountability reports); (2) FNS reviews of State agency operations, as described under Federal Monitoring; (3) State Performance Reporting Systems, as explained in the Sections dealing with ME reviews, QC reviews and corrective action; and (4) other information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints and any pending litigation. Since no single source would provide a view of the total program, the Department considers that data must be drawn from a broad range of sources. In this way, the Department would be able to assess the States' programs from different perspectives and arrive at a valid determination of each State's overall administration.

The Food Stamp Act provides that States which achieve cumulative allotment error rates of less than 5 percent with respect to basic program eligibility, overissuance and underissuance of coupons as determined by quality control shall have their Federally funded share of administrative costs increased to 60 percent. The Department considers, however, that before States receive a substantial increase in Federal funding, it will be necessary to verify the precision of the reported error rates. Otherwise, the Department would not be meeting its accountability responsibilities for Federal funds. Therefore, whenever States report QC error rates which could result in enhanced funding, the Department proposes to conduct reviews to accomplish the following: (1) To validate the cumulative allotment error rate in the manner described in the Section dealing with administration; (2) to ensure that the State is using FNS-approved sampling techniques, as discussed in the section describing quality control reviews; and (3) to validate the State's QC completion rate to ensure that it is at least 95 percent, as also proposed in the section on quality control reviews.

When FNS has completed the above reviews and ensured that the error rates are below 5 percent and were determined using valid techniques, the State's Federally funded share of administrative costs shall be increased retroactively for the period in which the State's error rates are less than 5 percent. Because the procedures for enhanced funding will be described in Part 277, the Department is not

discussing this matter further at this time.

Therefore, the Department proposes that Part 271 be amended to include appropriate definitions and Part 275 be amended to read as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

Section 271.2 is amended to include the following definitions and read as follows:

§ 271.1 Definitions.

"Active case" means a household which was certified for and received food coupons during the sample month.

"Active case error rate" means an estimate of the proportion of cases with an error in the determination of eligibility or basis of issuance. This estimate will be expressed as a percentage of the completed active quality control reviews.

"Administrative deficiencies" means deficiencies detected in a case which do not affect a household's eligibility for food stamps or involve overissuance or underissuances.

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"Annual review period" for quality control purposes means the 12-month period from October 1 through September 30. For management evaluation review purposes, the annual review period means the 12-month period from January 1 through December 31.

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"Biennial review period" means the 24-month period from January 1 of an even-numbered year through December 31 of the following year.

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"Cumulative allotment error rate" means the sum of the absolute values of the ineligible, overissuance, and underissuance allotment error rates based upon completed quality control review where:

(1) The ineligible allotment error rate is an estimate of the proportion of allotments issued to ineligible housholds, expressed as a percentage of all allotments issued to active sample cases;

(2) The overissuance allotment error rate is an estimate of the proportion of allotments issued to eligible households to which they were not entitled, expressed as a percentage of all allotments issued to active sample cases; and

(3) The underissuance allotment error rate is an estimate of the proportion of allotments to which eligible households were entitled to but did not receive, expressed as a percentage of all allotments issued to active sample cases.

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"Deficiency" means any aspect of a State's program operations determined to be out of compliance with the Food Stamp Act, FNS Regulations, program requirements as contained in the State's FNS-approved manual, or the State agency's Plan of Operation.

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"Error" for active cases results when a determination is made by a quality control reviewer that a household which received food coupons during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" results when the quality control reviewer determines that a household which was denied or terminated from the Food Stamp Program was, in fact, eligible to participate.

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"Large project area" means those project area/management units with a monthly issuance of $500,000 or more based on the most current information available at the time the biennial review schedule is developed.

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"Management Evaluation (ME) reviews" means reviews conducted at the project area level to determine if State agencies are administering and operating the Food Stamp Program in accordance with program requirements.

"Management unit" means an area based on a welfare district, region, or other administrative structure designated by the State agency and approved by FNS to be reviewed for ME review purposes.

"Negative case" means a household which was denied certification in the Food Stamp Program or whose benefits were terminated in the sample month.

"Negative case error rate" means an estimate of the proportion of denied or terminated cases where the household was in fact eligible to participate. This estimate will be expressed as a percentage of completed negative quality control reviews.

"Overissuance" means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

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"Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind, or disabled.

"Quality Control (QC)" means monitoring in an effort to reduce the rate of errors in determining basic eligibility and benefit levels.

"Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that negative cases are not incorrectly denied or terminated.

* * * * *

"Review date" for quality control active cases means a day within the sample month, either the first day of the month or the day the household was certified, whichever is later. The "review date" for negative cases is the date of the agency's decision to deny or terminate program benefits. For no case is the "review date" the day the QC review is conducted.

"Review period" for quality control purposes means the 6-month period either from October 1 through March 31 or April 1 through September 30.

"Sample frame" means a list of all units from which a sample is actually selected.

"Sample month" means the month of the sampling frame from which a case is selected (e.g., for all cases selected from a frame consisting of households participating in January, the sample month is January).

"Small project area" means those project areas/management units with a monthly issuance of less than $500,000 based on the most current information available at the time the biennial review schedule is developed.

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"Sub-units" means any organizational entity within a project area/management unit involved in the operation of the Food Stamp Program, excluding Post Offices.

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"Underissuance" means the amount by which the allotment to which the household was entitled exceeds the allotment for which the household received.

"Universe" means all units for which information is desired.

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[91 Stat. 958 (7 U.S.C. 2011–2027)]

The new Part 275 is added to read as set forth below:

PART 275—PERFORMANCE REPORTING SYSTEM

Subpart A—Administration

Sec.
275.1 General Scope and Purpose.
275.2 State Agency Responsibility.
275.3 Federal Monitoring.
275.4 Record Retention.

Subpart B—Management Evaluation (ME) Reviews

275.5 Scope and Purpose.
275.6 Management Units.
275.7 Selection of Sub-Units for Review.
275.8 Review Coverage.
275.9 Review Process.

Subpart C—Quality Control (QC) Reviews

275.10 Scope and Purpose.
275.11 Sampling.
275.12 Review of Active Cases.
275.13 Review of Negative Cases.
275.14 Review Schedule (Form FNS–245).

Subpart D—Data Analysis and Evaluation

275.15 Data Management.

Subpart E—Corrective Action

275.16 Corrective Action Planning.
275.17 State Corrective Action Plan.
275.18 Project Area/Management Unit Corrective Action Plan.
275.19 Monitoring and Evaluation.

Subpart F—Responsibilities For Reporting On Program Performance

275.20 ME Review Reports.
275.21 QC Review Reports.
275.22 State Corrective Action Plan.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

PART 275—PERFORMANCE REPORTING SYSTEM

Subpart A—Administration

§ 275.1 General scope and purpose.

(a) Under the Food Stamp Act, each State agency is responsible for the administration of the Food Stamp Program in accordance with the Act, Regulations, and the State agency's plan of operation. To fulfill the requirements of the Act, each State agency shall have a system for monitoring and improving its administration of the program. The State agency is also responsible for reporting on its administration to FNS. These reports shall identify program deficiencies and the specific administrative action proposed to meet the program requirements established by the Secretary. If it is determined, however, that a State has failed without good cause to meet any of the program requirements established by the Secretary, or has failed to carry out the approved State plan of operation (of which the State corrective action plan is a part), the Department shall suspend and/or disallow from the State such funds as determined to be appropriate in accordance with Part 276.

(b) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the share to 60 percent of all administrative costs for State agencies whose cumulative allotment error rates with respect to basic program eligibility, overissuance, and underissuance of coupons as determined by quality control are less than 5 percent. Those State agencies whose cumulative allotment error rates are 5 percent or more are required to specify and carry out the corrective action which they propose to take to reduce errors. "Quality Control" means monitoring in an effort to reduce the rate of errors in determining basic eligibility and benefit levels.

§ 275.2 State agency responsibilities.

(a) *Establishment of the Performance Reporting System.* (1) The State agency shall establish a continuing performance reporting system to monitor program administration and program operations. The method for establishing each component of the system is identified and explained in Subparts B through F of this part. The components of the State agency's performance reporting system shall be:

(i) Data collection through Management Evaluation (ME) reviews and Quality Control (QC) reviews;

(ii) Analysis and evaluation of data from all sources;

(iii) Corrective action planning;

(iv) Corrective action implementation and monitoring; and

(v) Reporting to FNS on program performance.

(2) The State agency shall designate a person on a full-time basis to coordinate the activities of the Performance Reporting System. Exceptions to the requirement for a full-time Coordinator may be granted with prior FNS approval only when a State agency can demonstrate that a part-time Coordinator can effectively coordinate the activities of the system. In addition, the State agency shall designate an organizational entity within the State structure which shall be at a level of authority to ensure corrective action is effected at the State and project area levels.

(b) *Staffing Standards.* The State agency shall employ sufficient State level staff to perform all aspect of the Performance Reporting System as required in this Part of the regulations. The staff used to conduct QC reviews shall not have prior knowledge of either the household or the decision under review. Where there is prior knowledge, the reviewer must disqualify her/himself. Prior knowledge is defined as having: (1) Taken any part in the decision that has been made in the case; (2) any discussion of the case with staff who participated in the decision; or (3) any personal knowledge of or acquaintance with persons in the case itself. To ensure no prior knowledge on the part of QC or ME reviewers, local project area staff shall not be used to conduct QC or ME reviews; exceptions to this requirement concerning local level staff may be granted with prior approval from FNS.

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the following reviews described below in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conducting of these reviews to reduce the frequency of entry into the State agency. FNS Regional Offices will conduct additional reviews when warranted, to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. State agencies shall have 60 days from receipt of the findings of each review established below to develop corrective action addressing all deficiencies detected in either program or system operations. A description of the corrective action for each deficiency must be included in the appropriate corrective action plan and amendments to the State Corrective Action Plan must be submitted to the FNS Regional Office no later than 60 days from the date the State agency receives the findings of a review.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FNS shall conduct an annual review of all functions performed at the State agency level in the administration/operation of the program such as but not limited to: Certification and issuance procedures, security and control procedures, accountability, reconciliation, record keeping and

reporting procedures, training, outreach, complaint procedures, fraud, fair hearings, disaster preparedness, State agency supervision of the functions performed by the project area including billingual services, standards for points and hours, and a review of the Plan of Operation and the State manual.

(b) *Reviews of State Agency's Performance Reporting System.* The Food and Nutrition Service will review each State agency's performance reporting system. These reviews consist of two phases:

(1) *Management Evaluation (ME) Reviews.* FNS will review on an annual basis the State agency's performance reporting system (in terms of ME reviews conducted by the State agency). The review will include an assessment of the State's methods and procedures for conducting ME reviews including sampling techniques, and an assessment of the data collected by the State in conducting the reviews. This review will also include an assessment of the State agency's system for data analysis and evaluation.

(2) *Quality Control (QC) Reviews.* FNS will review on a semiannual basis the State agency's system for conducting QC reviews. Exceptions to conducting two reviews annually may be granted by FNS (National Office) when a State agency justifies and the FNS Regional Office agrees that one annual system review is sufficient *and* the State currently is taking adequate steps to correct existing system deficiencies. FNS will conduct the reviews only for those States not reviewed under paragraph (c) of this section. The review will include an assessment of the State agency's methods and procedures for conducting QC reviews and an examination of the State's sampling techniques to ensure compliance with Federal regulations.

(c) *Review of State Agency's Cumulative Allotment Error Rates.* These reviews shall be conducted, at a minimum, whenever a State agency reports cumulative allotment error rates of less than 5 percent with respect to basic program eligibility, overissuance, and underissuance of coupons as determined through QC reviews. The review shall include: (1) Validation of the error rates; (2) examination of State QC sampling techniques; and (3) affirmation of the State's QC completion rate. The findings of this review shall determine whether a State agency is entitled to enhanced funding.

(d) *Assessment of Corrective Action.* (1) FNS will conduct a comprehensive annual assessment of a State's corrective action process by compiling all information relative to a State's corrective action efforts. The purpose of this assessment and review is to determine if: all identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit Corrective Action Plan, the State agency is implementing corrective actions according to the appropriate plan, target completion dates for reduction or elimination of deficiencies are being met, and if corrective actions are effective. In addition, FNS will examine the State's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions at least semiannually or as frequently as considered necessary to ensure that States are implementing proposed corrective actions within the timeframes specified in the State and/or project area/management unit corrective action plans. The on-site reviews will provide States and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

§ 275.4 Record retention.

(a) The State agency shall maintain Performance Reporting System records to permit ready access to, and use of, these records. Performance Reporting System records include information used in data analysis and evaluation, corrective action plans, corrective action monitoring records in addition to ME review records and QC review records as explained in paragraphs (b) and (c) of this section. To be readily accessible, system records shall be retained and filed chronologically in an orderly sequence. Precautions should be taken to ensure that these records are retained without loss or destruction for the 3-year period required by these regulations. Information obtained on individual households for Performance Reporting System purposes shall be safeguarded in accordance with FNS policies on disclosure of information for the Food Stamp Program.

(b) ME review records consist of thorough documentation of review findings, sources from which information was obtained, procedures used to review Food Stamp Program requirements including sampling techniques, and ME review plans. The State agency must submit documented evidence of review findings to the FNS Regional Office upon request for purposes of evaluating State corrective action plans.

(c) QC review records consist of Forms FNS–245, Quality Control Review Schedule, and Forms FNS–248, Status of Sample Cases in Reporting Month and Period; other materials supporting the review decision; sample lists; tabulation sheets, and semiannual reports.

Subpart B—Management Evaluation (ME) Reviews

§ 275.5 Scope and purpose.

(a) *Objectives.* Each State agency shall ensure that all project areas operate the Food Stamp Program in accordance with the Act, Regulations, FNS-approved State manuals and the States' Plans of Operation. To ensure compliance with program requirements, ME reviews shall be conducted to measure compliance with the provisions of FNS Regulations, FNS—approved State manuals, and States' Plans of Operation. The objectives of an ME review are to:

(1) Provide a systematic method of monitoring and assessing program operations in the project areas;

(2) Provide a basis for project areas to improve and strengthen program operations by identifying and correcting deficiencies; and

(3) Provide a continuing flow of information between the project areas, the States, and FNS, necessary to develop the solutions to problems in program policy and procedures.

(b) *Frequency of review.* (1) State agencies shall conduct a review at least once annually for large project areas/management units and at least once every two years in all other project areas. Large project areas are those which report a monthly issuance of $500,000 or more, based upon the most current information available at the time the biennial review schedule is developed.

(2) In accordance with § 275.15, State agencies may also conduct full or partial ME reviews when additional information is needed to determine the cause, extent, or the specific nature of an identified deficiency. The determination as to where these additional reviews are conducted and the method of review to be employed shall be dictated by the type of information needed. States may conduct reviews in specific project areas or in selected sub-units throughout the State, using any of the review methods identified in § 275.9(c) or another technique, provided that the method

used secures the required information. These reviews may concentrate upon an entire area of program operation or on a single program requirement. An example of when this additional review activity shall be initiated, in accordance with § 271.6(a)(8)(vi), is when States' complaint systems receive data which indicates that a pattern of deficiencies in application processing may exist, but the data is inconclusive in terms of the extent of a deficiency. Where no other data source provides information regarding the extent of the deficiency, the State would conduct an additional ME review. The review could involve on-site examination of the local sub-units involved in the complaints, or an examination of a random sample of sub-units within the project areas receiving the complaints. When additional ME reviews are conducted States shall prepare a ME review plan, as identified in § 275.9(b), with any appropriate modifications. For each additional review conducted States shall use the review worksheet defined in § 275.9(e).

(3) FNS may require the State agency to conduct more frequent reviews for reasons such as ensuring that appropriate corrective actions have been taken to remedy serious problems.

§ 275.6 Management units.

(a) *Establishment of management units.* For the purpose of ME reviews, State agencies may, subject to FNS approval, establish "management units" which are different from project areas designated by FNS for participation in the program. For example, State-established welfare districts, regions or other administrative structures within a State may be so designated. However, FNS may require certain large project areas within the State to be separated into two or more smaller management units. This may occur when, for example, a project area is too large for effective ME monitoring. Management units can be designated as either large or small project areas. However, establishment of management units solely for the purpose of reducing the frequency of review from annual to biennial or for the purpose of reducing total sample size will not be approved by FNS.

(b) *FNS approval of management units.* State agencies shall submit requests for establishment of management units to FNS, which shall have final authority for approval of such units as well as any changes in those previously approved by FNS.

(1) The following minimum criteria must be met prior to requesting FNS approval:

(i) The proposed management unit must correspond with existing State-established welfare districts, regions, or other administrative structures; and

(ii) The unit must have supervisory control over Food Stamp Program operations within that geographic area and have authority for implementation of corrective action.

(2) In submitting the request for FNS approval, the State agency shall include the following information regarding the proposed management unit:

(i) That the proposed management unit meets the minimum criteria described in paragraph (b)(1) (i) and (ii) of this section.

(ii) Geographic coverage, including the names of the counties/project areas within the unit and the identification (district or region number) and location (city) of the office which has supervisory control over the management unit;

(iii) Food Stamp Program participation, including the number of persons and number of households;

(iv) The number of certification offices;

(v) The number of issuance units;

(vi) The dollar value of allotments issued as reflected in the most recent available data; and

(vii) Any other relevant information.

(3) FNS Regional Offices have the authority to require additional ME reviews, as needed, in order to ensure adequate monitoring of the management unit.

§ 275.7 Selection of sub-units for review.

(a) *Definition of sub-unit.* A sub-unit is any organizational entity within a project area involved in the operation of the Food Stamp Program, excluding Post Offices. Sub-units shall be classified and listed based upon functional responsibilities as: (1) Certification offices; (2) issuance offices; (3) bulk storage points; (4) reporting points; or (5) data management units.

(b) *Combined responsibilities.* When an entity has a combination of functional responsibilities it shall be listed in each applicable sub-unit classification. Where a sub-unit with more than one functional responsibility has been selected from a classification, it may be considered to have been selected from all classifications it has been listed in. In these instances the requirements associated with each functional classification shall be reviewed and the sample size(s) for each classification(s) the sub-unit has been listed and reduced accordingly.

(c) *Itinerant issuance and certification points.* Itinerant issuance and certification points, such as mobile units, shall not be classified as independent sub-units. However, where itinerant issuance and/or certification points operate out of a sub-unit selected for review, at least one itinerant point per sub-unit shall be reviewed provided that the itinerant point(s) is operational at the time of the review.

(d) *Sample sizes.* State agencies shall use probability sampling when selecting sub-units for on-site review to ensure that the sub-units selected are representative of the project area's operation of the program. Each of the above classifications shall constitute a separate sample frame. From each frame a separate sample shall be selected based upon the sample sizes in Table 1.

Table 1

Number of sub-units per classification	Required sample size per classification
>100	9
75–99	8
50–74	7
25–49	6
10–24	5
5–9	4
<4	all

(e) *Sample selection.* State agencies may any acceptable sampling procedure when selecting sub-units for on-site review, provided the resultant sample is random and unbiased. When the number of sub-units in a given frame is small, the simplest technique will suffice. In frames containing a large number of sub-units, State agencies may wish to use a systematic sampling approach as it is often the least time consuming and relatively easy to administer.

(f) *Selection of additional sub-units.* Once a sample is selected State agencies may randomly select and include additional sub-units in the sample. However, no sub-unit may be dropped once selected for review, unless a Federal audit or investigation is to be conducted simultaneously with the ME review. In these instances the sub-unit(s) shall be dropped and a replacement(s) randomly selected.

(g) *Adjustment of samples.* (1) States may select sub-units for review which are suspected of having, or known to have, specific problems in their operation of the program or have special characteristics which require monitoring. For example, a certification office with a large nonassistance caseload, or an issuance office known to have problems with daily reconciliation may not be selected in the random sample but should be reviewed to ensure complete coverage of the project area's operation. In situations such as

these States may select sub-units from a classification before selecting the required random sample and reduce the sample size for that classification accordingly. However, not more than 25 percent of the sub-units selected from any classification shall consist of sub-units selected on a nonrandom basis. When a sub-unit is selected because of suspected and/or known problems or special characteristics the sub-unit and the reason for nonrandom selection shall be identified in the review plan described in § 275.9(b).

§ 275.8 Review coverage.

(a) *Program requirements.* State agencies shall review all areas of program operation specified in this section, and the requirements associated with them, during each ME Review. The program requirements applicable to each area are specified in Parts 271, 272, 273, 274, 280 and 281 of this chapter.

(b) *Certification responsibilities.* The review of certification responsibilities shall encompass the requirements associated with the program areas of: (1) Application processing; (2) work registration; (3) expedited service; (4) notification to households; (5) disaster prepardness, where applicable; (6) implementation of regulation changes; (7) restoration of lost benefits; (8) claims against households, (9) fraud; (10) fair hearings; (11) sixty day continuation of benefits; (12) action upon changes; (13) transmission of information to the data management unit; (14) bilingual requirements; and (15) general service to participants.

(c) *Issuance responsibilities.* The review of issuance responsibilities shall encompass the requirements associated with the program areas of: (1) The HIR master file; (2) ATP or HIR issuance system (depending upon the project area's system); (3) expedited issuance; (4) mail issuance; and (5) general issuance services.

(d) *Reconciliation.* The review of reconciliation shall encompass the requirements associated with the program areas of: (1) Vertification of ATP issuance, reconciliation of ATP's to the master file, and identification of ATP's not reconciling; or (2) HIR reconciliation to the case file; and (3) reconciliation of Food Coupon Book Reports to Food Coupon Accountability Reports.

(e) *Reporting/recordkeeping.* The review of reporting/recordkeeping shall encompass the requirements associated with: (1) Food Coupon Accountability Reports and its continuation sheet; (2) Quarterly Food Stamp Mail Issuance Reports; (3) Monthly Report of Participation and Coupon Issuances; (4) Participation in the Food Stamp Program-By Racial-Ethnic Category; (5) Advise of Transfers; (6) Food Coupon Requisition Reports; and (7) Food Coupon Reconciliation Reports.

(f) *Security/control.* The review of security/control shall encompass the requirements for all accountable documents including: (1) Notices of change; (2) HIR cards; (3) ATP cards, (4) ID cards, (5) Certification of Transfer of Household Benefits forms; (6) coupons; and (7) specimen coupons.

(g) *Complaint procedures.* Where applicable, the review of project areas' system for complaints shall encompass the requirements associated with the areas of: (1) Project area staffing; and (2) project areas' handling of program complaints.

(h) *Points and hours.* [Reserved]

(i) *Outreach.* The review of project areas' outreach program shall encompass the minimum requirements associated with the areas of: (1) Volunteers; (2) referral systems; (3) printed materials, including bilingual materials, where applicable; (4) media contracts; (5) cooperation with Community Food and Nutrition Project Grantees; (6) removing participation barriers; (7) project area outreach reports; and (8) any provision of the State Outreach Plan that requires additional outreach activity at the project area level.

(j) *Personnel requirements.* The review of personnel requirements shall include an examination of project areas' compliance with: (1) Staffing standards; (2) use of merit personnel; (3) training of project area personnel; and (4) bilingual personnel, where applicable.

(k) *State administration.* Where an area of program operation or a program requirement is performed at the State level and the project area has no responsibility for direct administration of that area or requirement, it will be reviewed by FNS and need not be included in ME reviews. An example of this is where the HIR master file is maintained at the State level, and the project areas have no responsibility for direct administration of the requirements associated with the master file. In this and similar situations the program area cannot be reviewed during ME reviews and will be reviewed by FNS as identified in § 275.3(d).

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements associated with the program areas specified in § 275.8 in accordance with the procedures outlined in this section. As each project area's operational structure will differ, States shall review each program requirement in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME Review. This review plan shall contain:

(i) Identification of the project area to be reviewed and the dates the review will be conducted.

(ii) Information secured from the project area regarding its caseload and organization including:

(A) The number of sub-units, by classification, within the project area including identification of those with combined responsibilities and those with itinerant service points;

(B) Identification of where program records are physically maintained within the project area and the controls used to organize them, i.e., logs, lists of actions, and particularly case file organization and content;

(C) The estimated number of each program record (as defined in paragraph (d) of this section) generated during the 6 month period prior to the month of review in the project area, provided that the estimated number of ATP or HIR cards shall only include those generated during the month prior to the month of review; and

(D) The estimated number of casefiles maintained in each sub-unit selected for review and, for all records maintained in systems of records other than casefiles, the estimated number of each type of record maintained in each sub-unit selected for review.

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the sampling technique used to select them.

(iv) Identification of any sub-unit(s) selected on other than a random basis or eliminated from the issuance sample frame, as identified in § 275.7(g) and the reason for its nonrandom selection or elimination from the issuance frame.

(v) Identification of whether the State agency plans to select program records, as described in paragraph (d) of this section, only from those sub-units selected for review or on a project area-wide basis as identified in § 275.9(c)(11).

(2) In instances where the actual number of program records is unknown, State agencies shall estimate using the best information available. Estimates may be derived from the projection of actual data from 1 month over 6 months or from known yearly data averaged for

the 6 month period. When estimating, the State shall consider all available data sources and use the most accurate.

(3) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (1) State agencies should become familiar with sub-units' functional organization to determine the optimal method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with all program requirements.

(2) States agencies shall use selection of casefiles and examination of program records contained therein, as described in paragraph (d) of this section, to review all program requirements that lend themselves to such an approach. Where requirements do not lend themselves to this approach or where another approach may augment the results of record examination, State agencies shall use any of the following review methods to measure project are and/or sub-unit compliance with program requirements, provided that the method used ensures complete coverage of the program requirement it is applied to:

(i) On-site observation of project area procedures.

(ii) Discussion of procedures with appropriate project area officials and workers, local food stamp advocacy or outreach groups, or food stamp households.

(iii) Reconstruction of an actual process and comparison of findings with the project areas.

(iv) Step-by-step walk through of a certain procedure with appropriate workers or officials.

(3) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

(4) State agencies may go beyond the review methods listed above to examine project areas' compliance with program areas where specific problems are known to exist or where special emphasis is desired. States may select additional or larger samples of program records or use another method of review which goes into greater depth and results in more conclusive information.

(d) *Selection of program records for review.* (1) A program record is any official document, form, or record, contained in a system of records, which is used by project areas in their operation of the food stamp program. Program records include but are not limited to: applications; application worksheets; Notices of adverse action; Notices of expiration; Notices of eligibility, denial, and pending status; complaints; fair hearing records; restoration of lost benefits records; claims against households; work registration of lost benefits records; claims against households; work registration forms; notices of change; transfer of household benefits forms; student tax dependency forms; ATP cards; and HIR cards.

(2) The universe for the ME review of program records shall include all program records generated within a project area during the 6-month period prior to the month of the ME review; except that the universe for HIR and ATP cards shall include only those generated during the month prior to the month of review. This universe shall include active, pending, and negative program action records.

(3) The sample frames for the ME review of program records shall be established systems of records, i.e., case files, logs, lists of actions, which are maintained in sub-units selected for review; excluding any program records generated more than six months, or in the case of HIR and ATP cards more than one month, prior to the month of the review. Program records excluded from review shall be eliminated from any frame or sample in which they appear. Program records generated during the month of review shall be included in sample frames whenever possible. Sample frames shall include systems of records containing active, pending, and negative action program records. Only those program records generated under the regulations of the Food Stamp Act of 1977 shall be included in any sample frame. Program records generated under the regulations of the 1964 Act shall be eliminated from samle frames wherever possible.

(4) As many project areas' and sub-units' operational structures will differ, State agencies must determine how each type of program record is maintained in each sub-unit selected for review. The sample frame for each type of program record shall include all records of the same type maintained within those sub-units selected for review which were generated during the periods specified in paragraph (d)(3) of this section.

(5) Where several program records are maintained within casefiles, State agencies shall select a single sample of casefiles to meet the sample size requirements for each type of record contained in those casefiles. When a sample of casefiles fails to yield the required sample size for a program record, the State may continue to sample from the casefile to obtain the necessary number of records or use another method to review the requirements reflected by that record, as identified in paragraph (d)(8) of this section. Where a program record(s) is maintained in a system of records separate from the casefile in a sub-unit selected for review, a separate sample of that program record(s) shall be selected from the system in which it is maintained. To ensure that casefiles or program records selected for review are representative of all records of a given type within the sub-units selected for review, State agencies shall select casefiles or individual records in accordance with accepted sampling methodology. The actual technique used to select samples will be at the option of the State agency, provided that the technique yields a random and unbiased sample.

(6) The required sample size for casefiles or a given type of program record shall be determined by the total number of program records of the same type generated during the six-month period prior the month of the ME review, except in the case of ATP and HIR cards where the sample size shall be determined by the total number generated in the month prior to the month of review. Table 2 establishes the number of casefiles or program records State agencies must select and review. When selecting casefiles the sample size shall be dictated by the required sample size for the program record that appears most often in the casefile, e.g., applications. When selecting samples of individual program records, which are not maintained in casefiles, the sample size shall be based upon the number generated during the six- or one-month period.

Table 2

Total number of program records for sample period	Sample size
>300,000	1,200
100,000 - 299,999	900
50,000 - 99,999	600
25,000 - 49,999	400
10,000 - 24,999	250
5,000 - 9,999	150
1,000 - 4,999	100
100 - 999	75
<100	[1] 50

[1] Or all, whichever is less.

(7) When a casefile is selected for review, each program record contained in that casefile which was generated during the sample period shall be examined and counted toward

achievement of the required sample size for that record. Depending upon the program requirements associated with a given program record, absence of the record from a casefile may be a deficiency in itself. For example, if a household was certified for 3 months based upon an application submitted 6 months prior to the month of review and no notice of expiration or new application is in the casefile or any other system of records, the requirements for both the notice and recertification would not have been met. In instances such as these, lack of a given program record in a casefile shall also count toward achievement of the required sample size(s) for that program record. Any program record generated prior to the sampling period is not subject to review and shall be eliminated from the sample if selected. When a program record subject to review is selected for review, all program requirements reflected in that record shall be examined.

(8) Where a State agency has selected a sample of casefiles and the required sample size for a program record has not been achieved, the State agency may elect to:

(i) select another sample to achieve the required sample size for that program record, in which case only the record being sampled for must be reviewed; or

(ii) use one of the other methods of review, as identified in paragraph (c)(2) of this section, in place of or in conjunction with program record examination to ensure the requirements reflected by that program record have been completely covered. When the required sample size for a record is not fulfilled the State agency must document why it could not be achieved on the Review Worksheet required under paragraph (e) of this section. For example, if 400 casefiles are selected for review which yield 100 cases with work registration forms, where the required sample size for work registration forms is 150 the State agency would examine the work registration requirements reflected by the 100 forms and would then either randomly select additional casefiles to obtain the 50 additional forms or elect to use another review method. If another review method is used the State may simply idenitify, on the review worksheet, that work/registration forms failed to appear in sufficient number to satisfy the required sample size.

(9) State agencies shall sample casefiles or individual program records from appropriate sub-units proportionately. Once the required number of sub-units has been randomly selected, State agencies shall determine the number of casefiles or records that must be selected in each sub-unit selected for review which maintains that record. For example, in a project area with 6 certification offices which have received a total of 18,000 applications in the review period, 4 certification offices would be selected for review, based upon Table 1, from which 250 casefiles would be selected, based upon Table 2 (assuming applications appear most frequently in the casefiles). Assuming the 4 offices selected have caseloads of 1,000, 2,500, 3,000, and 5,000 the sample size for each office would be determined as follows:

(i) Calculate the total number of casefiles contained in each of the sub-units selected for review. (11,500 for the example).

(ii) Find the percentage the casefiles in each sub-unit represent of the total number of casefiles contained in all sub-units selected. (8.7, 21.7, 26.1, 43.5 for the example).

(iii) Multiply the required sample size by the percentage each sub-unit selected contains of the total number in all sub-units selected for review. (22, 54, 65, 109 for the example).

(10) State agencies shall use the above procedure to determine sub-unit sample sizes for casefiles and/or program records. State agencies may randomly select additional casefiles or program records but must not drop a record once it has been selected for review or substitute one record for another, unless a program record is unavailable due to an audit, investigation or quality control review.

(11) State agencies may select samples of casefiles or program records on a project area-wide basis, provided that the sampling requirements of paragraph (d)(8) of this section have been met, and the sample is random and no bias is introduced. State agencies electing to select samples on a project area-wide basis, rather than by sub-unit, must adhere to the provisions of § 275.7 but may disregard paragraphs (d)(4), (9), and (10) of this section and adjust the ME review plan and review worksheet as necessary.

(e) *Review worksheet.* (1) State agencies shall use a review worksheet, to be approved by FNS, to record all review findings. For each sub-unit reviewed the State agency shall, on the worksheet, identify:

(i) The sub-unit being reviewed;

(ii) Each program requirement reviewed in the sub-unit;

(iii) The method used to review each program requirement and, where applicable, why the required sample size for a program record was not achieved;

(iv) A description of any deficiency detected;

(v) The cause(s) of any deficiency detected, if known;

(vi) The number, by type, of program records selected and examined within the sub-unit as well as the method used to select the records;

(vii) Where applicable, the numerical extent of any deficiency detected through examination of program records; and

(viii) Any pertinent comments concerning the sub-unit's operation.

(2) Where State agencies elect to select casefiles or program records on a project area-wide basis, as identified in paragraph (d)(11) of this section, the total number of each type of program record selected in the project as well as the method of selection shall be identified. In these instances, subdivision (vi) or paragraph (e)(1) of this section may be disregarded.

(3) State agencies shall promptly forward review findings to the appropriate State office for analysis, evaluation and corrective action planning. Review worksheets shall be retained in an orderly fashion and made available to FNS upon request.

Subpart C—Quality Control (QC) Reviews

§ 275.10 Scope and purpose.

(a) As part of the Performance Reporting System, each State agency is responsible for conducting quality control reviews. For food stamp quality control reviews, a sample of households shall be selected from two different categories: (1) Households which are participating in the Food Stamp Program (called active cases) and (2) households for which participation was denied or terminated (called negative cases). Reviews shall be conducted on active cases to determine if households are eligible and receiving the correct allotment of food stamps. On negative cases, reviews shall be conducted to determine if households which were denied or terminated were in fact, not eligible to participate in the Food Stamp Program. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, as specified in each State's FNS-approved manual. The State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors

and to plan action to reduce excessive levels of errors.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload during the sample period;

(2) A basis for determining national rates of ineligibility and incorrect allotments, as well as rate for households wrongfully denied or terminated;

(3) A continuing flow of information between the States and FNS necessary to develop the solutions to problems in program policies and procedures; and

(4) A basis for assisting State agencies in improving and strengthening program operations by identifying deficiencies.

(c) The review process is the activity necessary to complete reviews and document findings of all cases selected in the sample for quality control reviews. The review process shall consist of: (1) Case assignment and completion monitoring; (2) case reviews; (3) supervisory review of completed worksheets and schedules; and (4) transmission of completed worksheets and schedules for centralized data processing and analysis.

§ 275.11 Sampling.

(a) *Sampling plan.* (1) The State agency must be able to demonstrate the integrity of its sampling procedures. All sampling procedures used by a State must be fully documented and available for review by FNS. A quality control sampling plan must be submitted to FNS for approval. The sampling plan must include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. In addition, the sampling plan must include a description of its relationship to other Federally-mandated quality control samples if the sample design requires coordination with, modification of, or approval by those programs (e.g., Aid to Families with Dependent Children or Medicaid). The advice and approval of FNS must be obtained prior to adoption of substantive changes in sample design, frame, or procedures.

(2) FNS recommends a systematic sample design because of its relative ease to administer, and because it yields a sample proportional to variations in the caseload over the course of the reporting period. (To obtain a systematic sample, States would select every kth case after random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the required sample size.) A State may, however, develop an alternative sampling plan which it believes to be better suited for its particular situation. The plan must be submitted to FNS for approval before being put into operation, must specify the advantages over current sampling procedures or systematic sampling, and must meet the following criteria:

(i) Conform to the principles of probability sampling;

(ii) Describe methods for estimating characteristics of the population and thier sampling errors;

(iii) (Provide population estimates with the same or better precision as would be obtained by a simple random sample with the specified sample size from Equations 1 or 2;

(iv) Describe the effect of the proposed sample design on data analysis and reporting requirements; and

(v) Maintain current effort in other phases of the quality control process, e.g., case reviews, statistical reports and data analysis.

(b) *Universe.* A universe consists of all units for which information is desired. Thate are two universes for the food stamp quality control program. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) The universe for active cases shall include all households receiving food stamps during a review period except those in which the participants died or moved out of the State, received food stamps by a disaster or 60-day continuation certification, were being investigated for Federal or State benefit program fraud, including households with pending fraud hearings, were appealing a Notice of Adverse Action when the review date falls within the time period covered by continued participation pending the hearing, or received restored benefits in accordance with § 273.17 but were otherwise ineligible during the reporting period.

(2) The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated during the review period except those which closed due to the expiration of the certification period, those which withdrew a signed application prior to the agency's determination, those which were under investigation for fraud, and those in which, at the time of the review, all household members had died or moved out of the State.

(c) *Frame.* (1) A frame is a list of all units from which a sample is actually selected. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. There are two frames for the food stamp quality control program:

(i) The frame for active cases shall list all households which participate during a review period except those excluded from the universe in paragraph (b)(1) of this section. States may elect to use a list of certified eligible households provided that households which do not participate are eliminated from the sample and that households which are certified eligible after the frame has been compiled and participate during the sample month are included.

(ii) The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated during the review period except those excluded from the universe in paragraph (b)(2) of this section.

(2) Complete coverage of both universes must be assured so that every household subject to quality control review will have an equal or known chance of being selected in the sample. Documentation of frame composition and construction shall be available for review by FNS.

(3) A frame may also include cases for which information is not desired, e.g., households which have been certified but did not actually participate during the review period. When such cases cannot be eliminated from the frame beforehand and are selected for the sample, they must be accounted for and reported as being not subject to review.

(d) *Sample size.* (1) The number of active cases to be selected and reviewed by each State during a six-month reporting period shall be determined by the average monthly caseload and the cumulative allotment error rate as defined in § 275.12(b)(1)(iv). The required sample size from the active universe for States using a systematic or simple random sample design shall be computed from the following equation:

Equation 1.

$$n(\text{active}) = 17.25p + 0.01725N - 110 \text{ where}$$

(i) n(active) is the required active sample size. This is the minimum number of active cases subject to review which must be selected each six-month period. If the result of Equation 1 is a sample size less than 150 or more than 1400, the minimum and maximum required sample shall be 150 and 1400, respectively;

(ii) p is the cumulative allotment error rate as defined in § 275.12(b)(1)(iv), expressed as a percentage of all allotments issued to active sample cases. The cumulative allotment error

rate equals the sum of the absolute values of the ineligible, overissuance, and underissuance allotment error rates from the most recently completed quality control sample. For any October–March period, the cumulative allotment error rate will be from the previous October–March reporting period. For any April–September period, the cumulative allotment error rate will be from the previous April–September reporting period.

(iii) N is the anticipated average monthly participating caseload subject to quality control review, i.e., households which are included in the active universe defined in paragraph (b) of this section, during the upcoming reporting period. (States in which the anticipated average caseload exceeds 60,000 households shall substitute N=60,000 in Equation 1.) Since this average monthly caseload must be estimated at the beginning of the period, unanticipated changes in the caseload can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, States will not be penalized if the actual caseload during a reporting period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(iv) Equation 1 assumes that States will use a systematic or simple random sample. Some States may be able to obtain results of equivalent reliability with a smaller sample and appropriate design, subject to FNS approval. To receive FNS approval, proposals of sample designs other than systematic or simple random sampling must provide population estimates with equivalent or better precision than would be obtained by a simple random design with the specified sample size from Equation 1.

(2) The number of negative cases to be selected and reviewed by each State during a six-month reporting period shall be determined by the monthly average number of such cases and the negative case error rate as defined in § 275.13(b)(1)(iv). The required sample size from the negative universe for States using a systematic or simple random sample design shall be computed from the following equation:

Equation 2.

$$n(\text{negative}) = 14.38p + 0.275N - 77$$ where

(i) n(negative) is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each six-month period. If the result of Equation 2 is a sample less than 150 or more than 1200, the minimum and maximum required sample shall be 150 and 1200, respectively;

(ii) p is the negative case error rate as defined in § 275.13(b)(1)(iv), expressed as a percentage of completed negative quality control reviews. The negative case error rate is the proportion of cases which were incorrectly denied or terminated in the most recently completed quality control sample. For any October–March period, the negative case error rate will be from the previous October–March reporting period. For any April–September period, the negative case error rate will be from the previous April–September reporting period.

(iii) N is the anticipated average monthly number of negative cases which are subject to quality control review, i.e., are part of the negative universe defined in paragraph (b) of this section, during the upcoming reporting period. (States in which the anticipated average number of negative cases exceeds 3000 shall substitute N=3000 in Equation 2.) Since this average monthly number of cases must be estimated at the beginning of the period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, States will not be penalized if the actual caseload during a reporting period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the large sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(iv) Equation 2 assumes that States will use a systematic or simple random sample. Some States may be able to obtain results of equivalent reliability with a smaller sample and appropriate design, subject to FNS approval. To receive FNS approval, proposals of sample designs other than systematic or simple random sampling must provide population estimates with equivalent or better precision than would be obtained by a simple random design with the specified sample size from Equation 2.

(3) To implement these provisions, quality control sample sizes will be based upon error rates reported from the January–June 1978 period until more current data are available. The cumulative allotment error rate shall be the sum of the absolute values of the basic program ineligibility, overissuance, and underissuance bonus dollar error rates. The negative case error rate shall be the proportion of invalid decisions, excluding those attributed to procedural errors.

(e) *Sample selection.* The quality control samples cover a six-month period, and the selection of cases shall be made separately for active cases and negative cases each month during that period. Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. If an active case is selected more than once in the six-month period, it should be reviewed only once, and the duplicate selection should be coded as "not subject to review". However, if the same case is selected in two six-month sample periods, e.g., in March for the October–March period and in April for the April–September period, it must be reviewed twice. If a household is selected more than once for the negative sample as the result of separate and distinct negative actions, it shall be reviewed each time.

(2) Quality control review of food stamp cases is most effective and most accurate when the reviews are made soon after the household has received its allotment for the sample month. If reviews are to be made as early as possible, the selection of sample cases must also be made promptly. The selection should be made not later than the 15th day of the month following the sample month.

(3) Excessive oversampling or undersampling may be corrected during a six-month period provided that the corrections introduce no bias into the sample data.

(f) *Sample completion.* To minimize the potential bias from nonresponse, States shall complete at least 95 percent of both the active and negative quality control samples. This percentage is the ratio of the number of completed reviews to the number of cases selected subject to review or to the minimum number of cases subject to review computed from the sample size equations, whichever is larger. The completion standard is applied separately to the active and negative samples. States' entitlement to the increased Federal share of administrative costs under § 275.26(c) will be subject to completion of 95 percent of the active quality control sample.

(g) *Reporting requirements.* States shall submit the edited results of all quality control reviews as coded on the Data Sheet of Form FNS–245 to FNS no later than 90 days from the end of each reporting period. Data submitted to FNS

later than 90 days from the end of each reporting period will not be processed and will not be reflected in the States' completed quality control sample. The data shall be submitted in a format specified by FNS. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

§ 275.12 Review of active cases.

(a) A sample of households which participated in the food Stamp Program during the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible, and is receiving the correct allotment. Information about household circumstances must be verified as of a particular point in time, called the review date. For active cases, the review date shall always fall within the sample month, either the first day of the month or the day of certification, whichever is later.

(b) The review of active cases shall include: a case record review; an interview with the participant; verification of information, using secondary sources when necessary; a determination of eligibility and correctness of basis of issuance; a determination of the presence of any errors, and coding and analysis of the errors, if applicable; and a determination of the number of administrative deficiencies, including administrative work registration deficiencies. To identify all errors in a case, the review must be completed to the point where the proper coupon allotment is determined, except in the situations outlined in paragraph (b)(2) of this section. The review process becomes progressively more difficult as the time subsequent to the review date increases. Therefore, it is essential that reviews be made as soon as possible after the review date, usually within 30 days of assignment.

(1) *Content of the review.* The reviewer shall examine and verify, as of the review date, all elements of eligibility, i.e., basic program requirements, resources, income, and deductions. The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9. When changes in household circumstances occur, the reviewer shall determine whether changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12 and 273.13. The reviewer shall determine, as of the review date, whether the sample case is eligible and whether the allotment was correct, and, if not, the extent of the error. In the event that a review is conducted of a household which is receiving restored or retroactive benefits, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. When the reviewer is reviewing a PA food stamp case, and income and deduction information is found that indicates that the PA grant is incorrect, then the PA grant shall be recomputed to determine what it should have been in the review month. For food stamp quality control purposes the PA income shall be the recomputed amount rather than the actual PA grant received. Whenever possible, this should be accomplished through a consolidation of PA and food stamp QC sample selection and review procedures. When such an administrative system is not being utilized, the food stamp QC reviewer shall either recompute the PA grant prior to computing the food stamp allotment or return the case to a PA worker qualified to recompute the PA grant prior to the completion of the review. If the State agency instructs their food stamp QC reviewers to recompute the PA grants, it shall ensure that adequate provisions are made to allow for the increased review time per case and for training in the two different types of computations involved in the two programs. If the State agency elects to require that the PA workers recompute the PA grant for the food stamp QC reviewers, it shall ensure that the transfer of records is expedient and that no case records are lost.

(i) *Household case record review.* The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change, and applies to the sample month. Through the review of the household case record, the reviewer shall:

(A) Analyze the household's case record;

(B) Complete the household case record sections of Form FNS–245; and

(C) Tentatively plan the content of the field investigation.

(ii) *Field investigations.* A full field investigation shall be conducted for all active cases selected in the sample to determine if the household is eligible, and is receiving the correct allotment. In Alaska, when it is impossible to conduct a field review due to inaccessibility of the home due to weather conditions, an exception to this requirement can be made by FNS and the review completed without the field review. However, justification must be provided if an exception is to be made. The field investigation will include interviews with the head of household, spouse or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status.

(A) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy and dignity of the participants. The reviewer shall notify the household prior to making a home visit. Most interviews will be held in the home; however, exceptions can be made by the reviewer when circumstances warrant. Under no circumstances shall the interview be conducted by phone. During the interview with the participant, the reviewer shall:

(1) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(2) Establish the composition of the household;

(3) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(4) If required by the State, obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal, and continue the review to the fullest extent possible.

(B) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.) and shall thoroughly document all verification obtained. If any information obtained by the reviewer differs from that given by the participant, then the State agency shall discuss the differences with the participant to determine which

information is correct before corrective action is taken on the case.

(iii) *Identification of errors.* All elements which vary in an error case shall be listed without assigning priorities. This will include all basic program requirements found to be in error. Once a State has listed all elements in error, it may, for its own purposes, elect to designate a primary error. When the reviewer detects a variance, i.e., the correct amount determined for the sample month is different from the amount determined at the time of certification, due to an unreported change which the participant is not required to report, the reviewer shall not reflect that variance as an error.

(A) *Eligibility errors.* If the reviewer determines that a case is ineligible then the occurrence and amount of an eligibility error shall be coded on the Data Sheet of Form FNS–245. If a case contains both an eligibility error and a basis of issuance error, then the eligibility error will always take precedence over the basis of issuance error for coding purposes.

(B) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued in an amount exceeding $5.00 to eligible households, then the occurrence and amount of a basis of issuance error shall be coded on the Data Sheet of Form FNS–245.

(iv) *Error analysis.* Whenever the reviewer determines that a case is in error, as defined in this paragraph, the reviewer shall determine whether the error occurred at the time of certification or subsequent to certification and whether the error was agency or participant caused. If inadequate documentation in the case record results in the reviewer being unable to determine whether the error occurred at the time of or subsequent to certification and/or who caused it, then the error shall be assigned to the State agency. These determinations, with supporting documentation, must be recorded on Form FNS–245. All error information shall be reported to the State agency for appropriate action on an individual case basis.

(A) *Active case error rate.* The active case error rate shall be the proportion of active sample cases which were determined to be ineligible or which received an incorrect allotment, in an amount exceeding $5.00, during the sample period based upon the certification policy as set forth in Part 273 of this Chapter.

(B) *Cumulative allotment error rate.* The cumulative allotment error rate shall include the value of the allotment underissued or overissued, including overissuance in ineligible cases, in those cases determined to be in error during the sample month excluding:

(1) Any allotment overissuance or underissuance resulting from variances in the household's gross nonexempt income where there is conclusive documentation (a listing of what attempts to verify were made and why they were unsuccessful) that the household's gross nonexempt income could not be verified at the time of certification because the source of income would not cooperate in providing verification and all other sources of verification were not available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude from the cumulative allotment error rate the value of the allotment overissuance or underissuance in the case. This follows certification policy outlined in § 273.2(f)(1)(i).

(2) Any allotment overissuance or underissuance resulting from an individual being included as a member of a household pending verification of citizenship where the individual is not a citizen or eligible alien. This follows certification policy outlined in § 273.2(f)(2)(ii)(B).

(3) Any allotment overissuance or underissuance resulting from cases certified under expedited certification procedures which are found to be in error due to postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures is determined to be in error due to a residency deficiency, an error in the basis of issuance computation, a participant identification error, or incorrect expedited income accounting, all resulting dollar loss shall be included in the cumulative allotment error rate. This follows certification policy for expedited cases outlined in § 273.2(i)(4)(i).

(v) *Identification of administrative deficiencies.* In addition to the coding of any eligibility and/or basis of issuance errors, any deficiencies in a case which do not directly contribute to a dollar loss shall be identifed as administrative deficiencies. Whenever the reviewer determines that administrative deficiencies exist in an error or non-error case, each such deficiency shall be coded on the Data Sheet of Form FNS–245. This information shall be reported to the State agency for appropriate action on an individual case basis. For example, in a case containing an overdue subsequent certification the reviewer shall code an administrative deficiency and, if the overdue case is determined to be ineligible, or eligible for an allotment larger or smaller than that received, shall also code an eligibility or over or underissuance error. Administrative deficiencies shall include, but not be limited to, overdue subsequent certifications, unsigned application, no current application on file, incidence of exclusions described in paragraphs (b)(1)(iv)(B) *(1)*, *(2)*, *(3)* of this section, insufficient documenation, excessive verification, inadequate verification of those elements required to be verified in Part 273 of this chapter, administrative work registration requirement, etc. Examples of work registration requirements which shall be coded as administrative deficiencies are: Inadequate documentation of each household member's work registration status; nondetermination of household member's exempt status; lack of a work registration form for each non-exempt houshold member at time of application and every six months thereafter in the case file or office; and the household not advised of its responsibility to report any changes in the exempt status of any household member. Work registration requirements which are eligibility standards and which, if in error, shall be treated as errors, not administrative deficiencies, are when the participant: refuses at the time of application and once every six months thereafter to register for employment; refuses to fulfill reporting and inquiry about employment requirements; voluntarily quits any job without good cause; or refuses without good cause to accept an offer of employment.

(vi) *Identification of discrepancies.* The reviewer shall note as a discrepancy that part of a variance which results from a change required to be reported, which occurs after the review date. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) *Disposition of case review.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review.

(i) Active cases shall be reported as not completed if: The reviewer, after all reasonable efforts, is unable to locate the case record and/or is unable to locate the participant; the participant refuses to cooperate; or if the review is not completed in time to be included in

the semiannual reports. This information shall be reported to the State agency for appropriate action.

(ii) Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows: Death of all members of a household if they died before the review could be undertaken or completed; the household moved out of State before the review could be undertaken or completed; the household, at the time of the review, is under active investigation for Federal or State benefit program fraud, including a household with a pending fraud hearing; a household selected more than once in the same universe during a six-month reporting period; a household dropped as a result of correction for oversampling; a household participating under disaster certification authorized by FNS for a natural disaster; a case incorrectly listed in the active frame; a household under appeal from adverse action when the review date falls within the time period covered by continued participation pending the hearing; nonparticipation in the review month; or a household under sixty-day continuation of certification when the review date falls within those 60 days.

§ 275.13 Review of negative cases.

(a) A negative action results each time a household is denied certification to receive food stamps or has its participation in the Food Stamp Program terminated during the certification period. Negative cases shall be reviewed to determine the household's elegibility or ineligibility at the time of denial or termination. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits.

(b) The review shall include a case record review; a field investigation, if required; an analysis of errors; and a determination of the number of administrative deficiencies.

(1) *Content of the review.* The reviewer shall examine and vertify the household's eligibility or ineligibility, as of the review date. A decision must be reached as to the status of the household's eligibility at the time of the decision to deny or terminate.

(i) *Household case record review.* Through the review of the household case record, the reviewer shall:

(A) Analyze the household's case record;

(B) Complete the household case record sections of Form FNS–245;

(C) Tentatively plan the content of the field investigation, if necessary. When the case record provides acceptable vertification that the household is ineligible, a field investigation is not required. When the case record alone does not prove ineligibility, the reviewer may be able to verify the element(s) of eligibility in question by contacting by phone a collateral contact designated in the case record.

(ii) *Field investigation.* When neither the case record nor contact with a collateral contact previously designated by the household proves the household's ineligibility, a field investigation shall be conducted to determine the status of the household's eligibility at the time the decision to deny or terminate is made. The field investigation consists of an interview with the household and verification through further collateral sources of information. The reviewer shall terminate the field investigation at any point when the household is determined to be ineligible, either through an interview with the household, documentation in the household's possession, or collateral contact. However, a full field investigation, including examination and vertification of each element of eligibility, is required for any household which is not proven to be ineligible as of the review date either through the case record review or a partial field investigation. For each household which is eligible, a coupon allotment shall be computed based on the household's status at the time of the decision.

(A) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy and dignity of the household. The reviewer shall notify the household prior to making a home visit. Most interviews will be held in the home; however, exceptions can be made by the reviewer when circumstances warrant. During the interview with the household the reviewer shall:

(1) Explore with the head of the household or its representative, household circumstances to the point ineligibility is proven. If ineligibility is not proven, each factor of eligibility shall be explored; and

(2) Review the documentary evidence in the household's possession and secure information about collateral sources of vertification.

(B) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts where adequate verification was not available from the household. The reviewer shall make every effort to use the most reliable second party verification available; for example, banks, payroll listings, etc.

(iii) *Identification of errors.* A negative case shall be considered invalid when the reviewer verifies that a household which was denied or terminated from the program was, in fact, eligible to participate. When a negative case is invalid, an error shall be coded and the amount of the underissuance for the sample month shall be reported on the Data Sheet of Form FNS–245. This information shall be reported to the State agency for appropriate action on an individual case basis.

(iv) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were determined to have been eligible at the time of denial or termination based upon the certification policy as set forth in Part 273.

(v) *Identification of administrative deficiencies.* A negative action shall be considered valid when the household is, in fact, ineligible, either for the reason determined by the State agency or for some other reason. If the household is ineligible, but for a reason other than that given by the State agency, then an administrative deficiency shall be coded on the Data Sheet of Form FNS–245. Other examples of administrative deficiencies in negative cases include, but are not limited to, Notice of Adverse Action not sent, unsigned application, insufficient documentation, no application on file, etc. This information shall be reported to the State agency for appropriate action.

(2) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review.

(i) Negative cases shall be reported as not completed if the review cannot be completed through an analysis of the case record and it is not possible, due to circumstance beyond the agency's control, to make a field investigation. An example of such a circumstances beyond the agency's control, to make a field investigation. An example of such a circumstance would be if it was necessary for the reviewer to interview the household and the household could not be located or refused to cooperate.

(ii) Negative cases shall be reported as not subject to review when the household at the time of the review, withdrew a signed application prior to the agency's determination, is under active investigation for Federal or State benefit program fraud, was closed due to expiration of the certification period, was dropped as a result of correction for oversampling, or is a household in

which all members died or moved out of State at the time of the review.

§ 275.14 Review Schedule (Form FNS-245).

(a) The Quality Review Schedule, Form FNS–245, shall be used by the reviewer to record information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance. Decisions reached by the reviewer shall be coded on the Data Sheet of Form FNS–245 and substantiated by information in the narrative section of this form. For an error case, reviewers shall list all elements in which agency and/or participant errors occured. In both error and non-error cases where adminstrative deficiencies occurred, the reviewer shall record these deficiencies. Space is also provided for recording discrepancies and other pertinent information.

(b) In some instances, reviewers may need to supplement Form FNS–245 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

Subpart D—Data Analysis and Evaluation

§ 275.15 Data management.

(a) *Analysis.* (1) Analysis is the process of classifying data, such as by areas of program requirements or use of error-prone profiles, to provide a basis for studying the data and determining trends including significant characteristics and their relationships.

(2) *Error-prone profiles.* (i) An error-prone profile is the product of a statistical analysis of quality control data. Its objective is the identification of clusters of cases characterized by particular caseworker, socio-economic, or other household traits which have a high probability of agency or participant error. In its simplest form, a profile is a description of characteristics which are most strongly associated with errors. With this information, attention can be focused on areas where errors are most likely to occur.

(ii) Any State agency that prepares an error-prone profile and any State agency that is provided an error-prone profile by FNS shall use the profiles as part of the data analysis process to provide a basis for the formulation and evaluation of corrective action.

(3) Although quality control is designed to produce Statewide estimates of the frequency and cost of errors, it can also provide useful information about smaller areas within the State. In addition to the analysis of the Statewide quality control sample, States shall examine the quality control review findings from project areas with an average monthly participating caseload in excess of 35,000 households and incorporate the results in its corrective action planning.

(b) *Evaluation.* Evaluation is the process of determining the cause(s) of each deficiency, magnitude of the deficiency, and geographic extend of the deficiency, to provide the basis for planning and developing effective corrective action.

(c) Each State agency must analyze and evaluate at the State and project area levels all management information sources available to:

(1) Identify all deficiencies in program operations and systems;

(2) Identify causal factors and their relationships;

(3) Identify magnitude of each deficiency, where appropriate (This is the frequency of each deficiency occurring based on the number of program records reviewed and, where applicable, the amount of loss either to the program or participants or potential participants in terms of dollars. The State agency shall include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Determine the geographic extent of each deficiency (e.g., Statewide/individual project area or management unit); and,

(5) Provide a basis for management decisions on planning, implementing, and evaluating corrective action.

(d) Management information sources which shall be used in the data analysis and evaluation process at the State agency and project areas levels include but are not limited to: Quality control reviews; error-prone profiles; administrative cost reviews; management evaluation reviews including State agency monitoring of the effectiveness of corrective action efforts; FNS reviews and assessments of State operations; civil rights review summaries; audits; investigation summaries; corrective action plans; outreach plans and reports; information obtained from the State's complaint procedures; fair hearing findings; credits for lost benefits; fiscal claims against participants; participants prosecutions; court suits; work registration/job search reports; racial/ethnic data reports; coupon accountability reports; budget and expense reports; mail issuance replacement reports; comments from participants, advocacy groups, and other interested parties.

(e) In the evaluation of data, situations may arise where the State agency identifies the existence of a deficiency, but after reviewing all available management information sources sufficient information is not available to make a determination of the actual causal factor(s), magnitude, or geographic extent necessary for the development of appropriate corrective action. In these situations, the State agency shall be responsible for gathering additional data necessary to make these determinations. This action may include, but is not limited to, conducting additional full or partial ME reviews in one or more project areas/management units or discussions with appropriate officials.

(f) Deficiencies identified from all management information sources must be analyzed and evaluated together to determine their causes, magnitude, and geographic extent. Causes indicated and deficiencies identified must be examined to determine if they are attributable to a single cause and can be effectively eliminated by a single action. Deficiencies and causes identified must also be compared to the results of past corrective action efforts to determine if the new problems arise from the causal factors which contributed to the occurrence or previously identified deficiencies.

(g) Data analysis and evaluation must be an ongoing process to facilitate the development of effective and prompt corrective action. The process shall also identify when deficiencies have been eliminated through corrective action efforts, and shall provide for the reevaluation of deficiencies and causes when it is determined that corrective action has not been effective.

Subpart E—Corrective Action

§ 275.16 Corrective action planning.

(a) Corrective action planning is the process by which State agencies and FNS shall determine appropriate actions to reduce substantially or eliminate deficiencies in program operations and provide responsive service to eligible households.

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. In planning corrective action, the State agency shall determine if correction of the deficiency requires action by the State agency, the project area/management unit, or the combined efforts of both. Deficiencies requiring

action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from State agency causal factors (e.g., inadequate or incorrect manuals, training materials, or operational guidelines; inadequate State staff; problems with Statewide computer system; problems with Statewide mail issuance system);

(2) Constitute a Statewide trend, including non-casefile related deficiencies (e.g., inadequate security, failure to conform to outreach requirements, inadequate facilities, etc.) when it is determined from any source(s) that such uncorrected deficiencies are occurring at the same time in 25 percent or more of the project areas/management units or 25 percent or more of the local certification or issuance offices if the State has only one FNS designated project area. A Statewide trend shall also include casefile related deficiencies (e.g., application processing, work registration, etc.) whenever the State agency determines through its constant monitoring of uncorrected deficiencies in project area/management unit CAP's that such deficiencies have been identified by regular ME reviews as occurring in 5 percent or more of the records examined in 25 percent or more of the State's total project areas/management units or in 25 percent or more of the local certification or issuance offices if the State has only one FNS designated project area. States shall continuously review data sources as outlined in § 275.15(c) to determine exactly when uncorrected deficiencies constitute a Statewide trend;

(3) Are the causes for a cumulative allotment error rate of 5 percent or more for any reporting period. (Actions to correct errors in individual cases, however, shall not be submitted as part of the State plan);

(4) Are the causes of other errors/deficiencies detected through quality control, including errors in negative cases and administrative deficiencies. (Actions to correct errors in individual cases, however, shall not be submitted as part of the State plan);

(5) Are identified by FNS reviews or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS); and

(6) Are patterns of errors identified in large project areas/management units. (Isolated occurrences of errors as determined by the State shall be excluded.)

(c) The State agency shall ensure that appropriate corrective action is taken on all deficiencies including each case found to be in error by quality control reviews and those deficiencies requiring corrective action only at the project area level. Moreover, when a substantial number of deficiencies are identified which require State agency level and/or project area/management unit corrective action, the State agency and/or project area/management unit shall establish an order or priority to ensure that the most serious deficiencies are addressed immediately and corrected as soon as possible. Primary factors to be considered when determining the most serious deficiencies are:

(1) Magnitude of the deficiency (the frequency of each deficiency occurring based on the number of program records reviewed and, where appropriate, the amount of loss in terms of dollars either to the program or participants or potential participants);

(2) Geographic extent of the deficiency (e.g., Statewide/project area or management unit);

(3) Anticipated results of corrective actions; and

(4) High probability of errors occurring as identified through all management evaluation sources.

(d) In planning corrective action, the State shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, training, and outreach activities to develop appropriate and effective corrective action measures.

§ 275.17 State corrective action plan.

(a) State agencies shall prepare a corrective action plan addressing those deficiencies specified in § 275.16(b) as requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been eliminated. Any deficiencies detected through any source not previously reported to FNS which require incorporation into the State Corrective Action Plan shall be submitted to FNS within 60 days of identification. As deficiencies are eliminated, the State agency shall notify FNS in writing. The State shall be responsible for documenting why each deficiency is being eliminated from the Plan. The elimination of any deficiency from the Plan will be subject to FNS review and validation.

(b) *Content.* State corrective action plans shall contain, but not necessarily be limited to, the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate (this is the frequency of each deficiency's occurrence based on the number of program records reviewed and, where applicable, the amount of loss in terms of dollars either to the program or participants or potential participants. The State agency shall also include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Geographic extent of the deficiency (e.g., Statewide/project area or management unit—specific project areas in which the deficiency occurs);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, and the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the State agency will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

§ 275.18 Project area/management unit corrective action plan.

(a) Project areas/management units shall prepare and submit to the State agency a corrective action plan addressing those deficiencies which will not be included in the State corrective action plan. This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been eliminated. Any deficiencies detected through any source not previously reported to the State agency which require incorporation into the Project Area/Management Unit Corrective Action Plan shall be submitted to the State agency within 60 days of identification. As deficiencies are eliminated, the project area/management unit shall notify the State agency in writing. The project area/management unit shall be responsible for documenting why each deficiency is being eliminated from the Plan. The elimination of any deficiency from the

Plan will be subject to State agency and FNS review and validation.

(b) *Content.* Project area/management unit corrective action plans shall contain, but not necessarily be limited to the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate (this is the frequency of each deficiency's occurrence based on the number of program records reviewed and, where appropriate, the amount of loss in terms of dollars either to the program or participants or potential participants. The project area/management unit shall also include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Geographic extent of the deficiency (throughout the project area/management unit or only in specific offices);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the project area/management unit will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

(c) State agencies may establish additional requirements for project areas/management units in planning, implementing and reporting corrective action to assist the State agency's efforts in fulfilling its responsibilities in determining which deficiencies must be addressed in the State corrective action plan and to monitor and evaluate project area/management unit corrective action efforts.

§ 275.19 Monitoring and evaluation.

(a) The State agency shall establish a system for monitoring and evaluating corrective action at the State and project area levels. Monitoring and evaluation shall be an ongoing process to determine that deficiencies are being substantially reduced or eliminated in an efficient manner and that the program provides responsive service to eligible households.

(b) The State agency shall ensure that correcitve action on all deficiencies identified in the State Corrective Action Plan and Project Area/Management Unit Corrective Action Plan is implemented are achieves the anticipated results within the specified time frames. The State agency shall monitor and evaluate corrective action at the State and project levels through a combination or reports, field reviews, and examination of current data available through program management tools and other sources.

(c) In instances where the State agency and/or the project area/management unit determines that the proposed corrective action is not effective in reducing substantially or eliminating deficiencies, the State agency and/or the project area/management unit shall promptly reevaluate the deficiency, causes, and the corrective action taken, and develop and implement new corrective actions.

Subpart F—Responsibilities for Reporting on Program Performance

Note.—Reports on program performance are intended to provide the State an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FNS Regional Office according to the time frames established in §§ 275.20, 275.21, and 275.22.

§ 275.20 ME review reports.

(a) *Review Schedules.*(1) Each State agency shall submit to the appropriate FNS Regional Office a review schedule for performance of ME reviews, which shall cover 2 years of review activity (January 1 of each even numbered year through December 31 of the following year).

(2) The review schedules shall include the following information:

(i) Total number of large project areas/management units in the State;

(ii) Total number of small project areas/management units in the State;

(iii) A list of each project area/management unit to be reviewed, by month, beginning January 1 of each new biennial period. Notations shall be made to identify those that are large project areas/large management units;

(3) Review schedules must be submitted for approval to the appropriate FNS Regional Office no later than November 1 of each odd numbered year. These schedules must ensure that all project areas/management units will be reviewed during the biennial period.

(4) States shall notify the appropriate FNS Regional Office of all changes in review schedules.

(5) During the period between the date that regular ME reviews are resumed and January 1, 1980 (the date the first review schedule submitted in accordance with this subpart becomes effective), States shall review the project areas scheduled for review according to the schedule submitted for the period from January 1, 1978 through December 31, 1979. For example, if ME reviews are resumed on July 1, 1979, States shall review the project areas originally scheduled between July and December of 1979. If regular reviews are resumed on October 1, 1979, States shall review those project areas designated for review in October, November and December of 1979, and so forth. States deviating from their 1978/1979 review schedules must notify FNS of their changes.

§ 275.21 Quality control review reports.

(a) States shall submit the edited results of all quality control reviews as coded on the Data Sheet of Form FNS–245 to FNS no later than 90 days from the end of each reporting period. Data submitted to FNS later than 90 days from the end of each reporting period will not be processed and will not be reflected in the States' completed quality control sample. The data shall be submitted in a format specified by FNS. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

§ 275.22 State corrective action plans.

(a) The first State Corrective Action plan prepared in accordance with the regulations shall be submitted to FNS for approval by October 1, 1979. Subsequent to the approval of the original Plan, proposed corrective action for all deficiencies identified as requiring State agency level action or combined State and project level action shall be submitted to FNS for approval within 60 days after identification. FNS may, when warranted, require a State agency to develop, submit, and implement corrective actions at any point within the 60 days. The State corrective action plan and all subsequent amendments shall be signed by either the State Welfare

Commissioner or a designated official who has the authority to effect corrective action.

(b) Each State agency shall advise FNS immediately upon becoming aware that previously reported corrective actions will not be effective in eliminating a deficiency or projected target dates will not be met. Each State agency will then submit an update to the corrective action plan within 60 days. When the reasons for inadequate corrective actions are unacceptable to FNS, the warnings specified in Part 276 of this chapter will be applied.

Subpart G—Program Performance and Administrative Cost Sharing

§ 275.23 Determination of State agency program performance.

(a) FNS shall determine the efficiency and effectiveness of a State's administration of the Food Stamp Program by measuring: (1) State compliance with the standards contained in the Food Stamp Act, Regulations, FNS approved State manuals and the State Plan of Operation; and (2) State efforts to improve program operations through corrective action.

(b) This determination shall be made based on: (1) Reports submitted to FNS by the State; (2) FNS reviews of State agency operations; (3) State performance reporting systems and corrective action efforts; and (4) other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(c) *Federal Enhanced Funding.* (1) When a State agency reports cumulative allotment error rates of less than 5 percent with respect to basic program eligibility, overissuance, and underissuance of coupons as determined by quality control, FNS will conduct reviews to:

(i) Validate the State's reported cumulative allotment error rates as provided in Subpart A, § 275 to ensure error rates of less than 5 percent.

(ii) Ensure that the sampling techniques used by the State are FNS—approved procedures as established in Subpart C, § 275 of these regulations; and

(iii) Validate the State's quality control completion rate to ensure that the rate is at the level required by § 275.11(f) of these regulations.

(2) After completion of the review specified in paragraph (c)(1) of this section by FNS and a determination that the State's error rates are in fact less than 5 percent, a State agency's Federally funded share of administrative costs shall be increased to 60 percent for the QC review period in which the State's error rates are less than 5 percent.

(3) States entitled to enhanced funding shall receive such funding on a retroactive basis only for the review period in which their cumulative allotment error rates are less than 5 percent. The procedures for enhanced funding are described in Part 277 of this chapter.

Note.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of a Draft Impact Analysis and certifies that a Draft Impact Analysis has been prepared. Copies are available for public inspection at Room 658, 500 12th Street, S.W., Washington, D.C. during regular business hours, and copies may be obtained form Nancy Snyder, Deputy Administrator for Family Nutrition Programs, FNS, USDA, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: April 3, 1979.

Carol Tucker Foreman,
Assistant Secretary.

[Amdt. No. 142]

[FR Doc. 79-10928 Filed 4-9-79; 8:45 am]

BILLING CODE 3410-30-M

[7 CFR Parts 271, 272]

Food Stamp Act of 1977

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking sets forth requirements for implementing the outreach provisions of the Food Stamp Act of 1977. Additionally, this proposed rulemaking sets forth procedures that State agencies must follow in handling complaints about the operation of the Food Stamp Program. These procedures were developed to improve services to program participants and potential participants and to help identify and remove barriers to participation in the Food Stamp Program.

DATES: Comments must be received not later than May 21, 1979 in order to be assured of consideration.

ADDRESS: Comments should be submitted to: Nancy Snyder, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Susan McAndrew, Acting Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250 (202) 447-6535.

SUPPLEMENTAL INFORMATION:

State Complaint Procedure

While households may pursue complaints concerning eligibility determinations and levels of benefits through the fair hearing system specified in § 273.15, and complaints alleging discrimination through nondiscrimination procedures specified in § 272.7, there is no requirement in the Food Stamp Act of 1977 or provision in current regulations for resolution of individual complaints concerning other service problems. Examples of these complaints would include insufficient hours of service at certification and issuance offices, long waiting lines at those offices, and delays in application processing.

These individual complaints are currently handled on an informal basis that may vary from project area to project area, therefore, households are not provided assurance that their complaints will be handled in a timely fashion. The program reviews conducted under the Performance Reporting System are too infrequent and limited in scope to identify all such barriers as they arise.

The Department therefore proposes establishing a requirement that State agencies adopt procedures for handling complaints. These procedures, which provide for specific State options, would both ensure timely resolution of individual complaints and facilitate State agency efforts to maximize service to households.

States would be provided the option of establishing either a complaint system at the State level only, or a "two-tiered" system involving both State and local levels. In a "State level only" system, complainants would file their complaints directly at the State level. In a two-tiered system, each complainant would have the choice of filing the complaint at the local or the State level.

State agencies would be required to designate staff at the State level to handle complaints. These State complaint coordinators would coordinate the receipt of complaints, refer complaints to the proper officials for resolution, and maintain documentation of complaints.

The Department proposes to allow States discretion in determining whether to designate full or part-time staff. State agencies would be expected to provide staff adequate to handle complaints within the timeframes established by this proposal. The staff designated to

handle complaints should be knowledgeable in all aspects of program operations and have the ability to quickly analyze problems. States would be responsible for ensuring that the staff at all levels who are responsible for handling complaints have ready access to appropriate officials responsible for correcting problems and receive cooperation in their efforts to respond to complainants.

In considering whether to propose that as part of a two-tiered system, complainants should be allowed initially to file a complaint either at the project area level or at the State level, the Department considered two problems. The first was that by permitting households to bypass the local level and file directly at the State level, some complaints which would be handled at the State level could be better handled at the local level. The second problem was that restricting complainants to the local level could in some instances provide an unsatisfactory remedy to complaints, since a local office which was the source of many complaints may not resolve them satisfactorily. The Department decided that the importance of ensuring satisfactory resolution of complaints outweighed the disadvantages of offering households this option. The Department believes that where local offices enjoy the reputation of being responsive to household grievances, most complainants will file their complaints directly at the local level.

The Department proposes that complainants may file complaints in person, by telephone, in writing, or through another person or agency acting on behalf of the complainant. These regulations also provide that complainants shall have 60 days from the date of the alleged incident to file a complaint. This 60 day standard is considerably shorter than the 90 days allowed for requestng a fair hearing. However, the Department believes this shorter standard is appropriate, because in most cases there will not be a written record such as a casefile to serve as the basis of an investigation of the complaint. Therefore, complaints should be investigated soon after the occurrence of the alleged incident which is the basis of the complaint. Further, the Department believes it unlikely that households would wait as long as 90 days to file a complaint.

In order to limit complaints processed through these procedures to those for which no other procedures exists, complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs, or handicap would be processed according to the procedures outlined in § 272.7 of the October 17, 1978 regulations. Complaints alleging an improper eligibility determination or incorrect level of benefits would be handled through the fair hearing system. Upon receipt of a complaint to be handled by a fair hearing, the official receiving the complaint would provide the complainant with an explanation of how and where to request a fair hearing, the availablity of continued benefits if appropriate, and the timeliness standards for requesting a fair hearing and receiving a decision. The Department is proposing that States have the option to concurrently review problems through the fair hearing system and the complaint procedures if a State believed the complaint warrants concurrent review.

Upon receipt of a complaint, if the State has chosen a two-tiered system, the official receiving the complaint would record the name, address and telephone number or other means of contacting the person making the complaint; the office which is the subject of the complaint; the specific nature and date of the incident or the aspect of program operations which caused the person to file the complaint; and the date the complaint was filed. The official receiving the complaint would then evaluate the complaint and refer it to the appropriate official for resolution. Within 60 days of receipt of the complaint, the project area would notify both the complainant and the State complaint coordinator of the actions taken or actions to be taken to resolve the complaint, or reasons why no action could be taken.

When the complainant contacts the State level directly, the State level official receiving the complaint would document the complaint, evaluate it, and refer it to the appropriate official for resolution. Within 60 days of receipt of the complaint, the State coordinator would notify the complainant of the actions taken or to be taken to resolve the complaint; or reasons why no action could be taken.

In both types of systems the State coordinator would be responsible for maintaining records, by project area, of all complaints received and the responses to the complaints. The records would be reviewed and analyzed by the State coordinator at least semiannually to identify patterns of deficiencies in local offices and/or project areas as indicated. Patterns of deficiencies refer to actual problems which are identified by multiple complaints in a local office as well as problems identifed by complaints throughout the project area. For example, a pattern of deficiencies could be represented by several complaints, which have been investigated and determined to be valid, regarding excessive waiting lines at an issuance site or an improper interpretation of a regulation. In addition, the State coordinator would use the semiannual analysis to determine if deficiencies identified by complaints are occurring throughout the State.

The Department is proposing that the State complaint coordinator, immediately upon completion of the semiannual analysis, provide the results of the analysis to the Performance Reporting System coordinator for appropriate action. The information to be provided to the Performance Reporting System coordinator would include but not necessarily be limited to: Identification of patterns of deficiencies in local offices and/or project areas; identification of deficiencies that are occurring throughout the State; identification of causes of deficiencies as determined from the semiannual analysis; and data relative to complaints which indicates that a pattern may exist, however, the data is insufficient and inconclusive in terms of the causes and the extent of the pattern or trend. The Performance Reporting System coordinator could refer the findings to the appropriate project area for inclusion in a project area corrective action plan or address the problem in the State Corrective Action Plan. In situations where the causes or extent of the pattern or trend could not be determined in sufficient detail to allow development of effective corrective action, the State agency would take the action necessary to obtain the information which is needed to determine appropriate corrective action. This action could include additional full or partial management evaluation reviews in one or more project areas in accordance with § 275.5.

The Department is proposing that to ensure effective operations of the complaint procedure, the State agency be required to monitor project area compliance with the requirements established by this section if the State uses a two-tiered complaint system. FNS would monitor State agency compliance through the Performance Reporting System.

Outreach

The outreach requirements in the Food Stamp Act of 1977 differ in several respects from the outreach requirements in the Food Stamp Act of 1964, as

amended. First, the requirement that State agencies "* * * insure the participation of eligible households" (section 10(e)(5) of the 1964 Act) was deleted. According to the *Senate Report,*[1] "the phrase 'to insure participation' contained in the current Act is not used because of the unintended burden it placed on States in effectively administering the provision."

Congress also added a prohibition against USDA funding to "outreach activities of a noninformational nature in those areas in which a federally funded community action program is in operation and conducting food stamp outreach." (Section 11 (e)(1)(B) of the Food Act of 1977.) According to the *House Report,*[2] this prohibition was added because "the Committee was concerned about duplication in federally funded food stamp outreach with community action agencies with funds from the Community Administration (CSA) and some matching monies from the Department undertaking outreach at the same time as and in the same place that State agencies were performing identical tasks."

The thrust behind these changes was to provide the Department with greater discretion in its response to outreach needs and to eliminate duplication of effort. Congress did not intend, however, that outreach efforts be decreased. On the contrary, the *House Report* points out: "There is a clear need for accurate information about the program to be disseminated to low-income families. This is especially true because this legislation will drastically change eligibility requirements and procedures. Low-income families should be informed about how the 'new' Food Stamp Program would work and about their duties and responsibilities under the new Program." Acting on this concern, Congress modified the outreach language in the law and expanded the notice requirements. As now stated in section 11(e)(1) of the Food Stamp Act of 1977, State agencies must "* * * inform low-income households about the availability, eligibility requirements, and benefits of the food stamp program, including, but not limited to, notification to recipients of aid to families with dependent children, supplemental security income, and unemployment compensation, distribution of application forms, and associated instructions in filling out such forms, and on the documentation required (to complete the certification process)."

The outreach regulations proposed by the Department require State agencies to design and administer outreach programs that facilitate the participation of eligible households in the Food Stamp Program. To maximize effectiveness, the Department decided that each State agency's outreach program should be responsive to the particular conditions and barriers to participation existing in each State. For example, the outreach techniques that would be successful regarding rural populations may be different than those used for urban populations. Other variables that would have to be taken into account when designing an outreach program include, among others, the size of the State; geographical barriers; the number of potentially eligible households; the availability and types of media outlets; the age, cultural backgrounds and language of the low-income population; the attitudes of people toward the Food Stamp Program; the extent to which people participate in programs such as public assistance, general assistance, medicaid, SSI, and unemployment compensation; the availability of transportation; and the number of groups, agencies and organizations active with the targeted population. In light of these variables, the Department could not design one outreach program to efficiently and effectively fit all States. Therefore, the proposed requirements represent general administrative requirements rather than specific "how-to" requirements.

Minimum Requirements. The Department proposes that eight general outreach activities be built into each State agency's outreach program: Using volunteers; operating a referral system; using media contacts; distributing printed materials; targeting areas and groups for special efforts; coordinating outreach efforts with Commodity Food and Nutrition Program grantees; identifying and removing participation barriers; and, operating a hotline service. These activities, in the Department's view, are basic to all effective outreach programs. They are intended to build a foundation from which State agencies can design individual programs.

One of the principal required activities contained in the proposed regulations is the recruitment and use of volunteers. The Department believes that effective communication about the Food Stamp Program requires contact with as many potentially eligible people as possible. Many volunteer groups and organizations are already in contact with numbers of potentially eligible low-income households or may be able to easily establish that communication. Therefore, the Department is proposing that State agencies make the recruitment and use of volunteers an integral part of outreach efforts. The proposed regulations list several specific groups and agencies as well as several types of groups and agencies that outreach staff must attempt to recruit. These "potential" volunteers are listed because of their involvement with low-income people who are likely to be eligible for food stamp benefits. The listing, however, is not exhaustive. The proposal requires that State agencies contact all appropriate volunteer agencies.

The proposal also requires that outreach staff plan for the use of volunteered services. The Department believes that volunteers should be used to the fullest extent of their capabilities but that volunteer recruitment efforts could be wasted if there is insufficient advance planning. There are numerous activities that volunteers can be called upon to do. The proposed regulations mention several including distributing outreach materials, prescreening applicants, and participating in the States' referral systems. The activities listed in the regulations are intended to be examples of functions volunteers can perform. States are encouraged to make full use of volunteers. To help ensure that there are no wasted efforts and that volunteers are used to their fullest capacity, States must provide training for volunteers in food stamp policy and procedures.

State agencies are also required to include a referral service program in the outreach program. The Department believes that this may be the most effective outreach activity that the State agency undertakes. Through a referral program, low-income individuals are contacted personally, advised of their possible eligibility for food stamp benefits and directed to local food stamp offices to file applications. From the Department's viewpoint, this active outreach effort will be more effective than a passive effort such as keeping a supply of food stamp pamphlets available in various locations.

The proposal requires that State agencies include public assistance and general assistance offices in their referral systems. Thus, when people apply for PA or GA benefits (and are not processed under the joint application rules in § 273.2(j)), they will be advised of their potential eligibility for food stamp benefits, informed about the application process and given a food stamp application. Since the effectiveness of the referral systems will increase as the number of groups, organizations and agencies participating

[1] *Senate Report*, 95–180 (May 16, 1977).
[2] *House Report*, 95–464 (June 24, 1977).

in the systems increases, the Department's proposal requires that State agencies attempt to enlist as many groups, organizations and agencies as possible. A list of groups, organizations and agencies that the State must attempt to incorporate into the referral system is included in the proposal. The Department expects State agencies to identify and recruit other appropriate groups, organizations and agencies. Any groups that work with low-income people would likely be appropriate to include in the referral system.

In addition to the referral system, the Department proposes that State agencies refer certain people to other assistance programs. Specifically, State agencies shall ensure that women who are pregnant or who have children who are under five years of age (under 6 years of age in the case of the Commodity Supplemental Food Program) are referred to offices administering the Special Supplemental Food Program for Women, Infants and Children (WIC Program) or the Commodity Supplemental Food Program. Additionally, people applying for food stamp benefits who are 65 years of age or older, or who are blind or disabled and who are not receiving Supplemental Security Income (SSI) shall be referred to the local Social Security Administration office. The Department included these provisions to target referral efforts on likely candidates for other assistance which is designed to complement food stamp assistance.[3]

A third activity proposed by the Department is the distribution of printed materials about the Program. In conjuction with the use of volunteers, the use of printed materials greatly expands the outreach staff's capacity for reaching low-income people without significant cost increases. The printed material is required to include information about eligibility requirements and Program benefits, the locations and hours of operation of certification offices, basic information about the application process, and the toll free food stamp telephone hotline number. The Department is preparing posters, pamphlets and brochures that can be used by States for this purpose. An initial supply of these materials will be made available to States. After this supply is exhausted States will be responsible for arranging for their own materials. They may use the Department's materials, adapt the Department's materials or develop their own to fulfill these requirements.

It is also proposed that State agencies display posters and distribute pamphlets containing nutrition education information. The nutrition education effort is based on section 11(e)(15) of the Act which states that, "* * * the State agency shall (make pamphlets available and) prominently display in all food stamp and public assistance offices posters prepared or obtained by the Secretary * * * (describing and) listing (A) foods that contain substantial amounts of recommended daily allowances of vitamins, minerals, and protein for children and adults; (B) menus that combine such foods into meals; (C) details on eligibility for other programs administered by the Secretary that provide nutrition benefits; and (D) general information on the relationship between health and diet." These printed materials are being developed by the Department for distribution to State agencies. Once available, the materials must be displayed and distributed in all public assistance and food stamp offices.

Fourth on the list of required outreach activities is the mandate that outreach officials establish and use media contracts. The media contacts will increase the ability of the outreach staff to inform low-income people about the Program. Not only should the contacts be used to disseminate program information such as that included in the printed materials, they should also be used to present indepth looks at the workings of the Food Stamp Program so that it is better understood by the general public. Since poor Program image can be a barrier to participation any effort such as this to erase popular misconceptions of the Program is important.

The fifth outreach requirement is that special efforts be made to reach targeted groups of people. This requirement mandates that outreach staff monitor the participation of potentially eligible people in the Program. The Department proposes that, annually, each State agency single out at least two geographic areas within the State—a region, county, or city—where participation seems to be unusually low or where there are large numbers of eligible nonparticipants and make special efforts to increase participation. These efforts might entail the development of particular printed materials, a different use of media or a more energetic volunteer recruitment effort, all of which are geared to facilitate increased participation. In addition to targeting special outreach efforts at geographic areas, the Department proposes that State agencies target specific groups of low-income people who seem to be participating at unusually low rates. This would require the analysis of the participation rates of such groups as the elderly or migrant farm laborers. State agencies should then tailor some of their outreach efforts to improve the participation of these group members.

The Department's proposal will also require that State agencies aim outreach efforts at participants in other assistance programs. In complying with this provision, all States shall endeavor to distribute food stamp outreach materials to recipients of unemployment compensation benefits because the recipients of these benefits represent a large group of potentially eligible food stamp participants. In addition, by complying with this provision of the proposal, State agencies will be fulfilling the requirement in section 11(e)(1)(A) of the Act which mandates that States direct outreach efforts at recipients of unemployment compensation. While the Act also requires that outreach be directed at recipients of public assistance, general assistance and SSI benefits, these households will be served through the joint application processing provisions in § 273.2 of the regulations. Therefore, the emphasis of the efforts in this proposal is on reaching unemployment compensation recipients.

What the Department has in mind is the direct distribution of food stamp outreach materials to these groups of people. Ideally, outreach officials should try to arrange to have the printed materials describing the Program handed to the participants in other assistance programs when the participants visit the offices of the other programs. Merely arranging to have a stack of the materials available in the offices of the other assistance programs is not the type of distribution of materials the Department expects for fulfillment of this requirement. What is expected is a more active distribution effort. An alternative to the preferred method of distribution described above is the direct, periodic mailing of materials to participants in other assistance programs. While this method of distribution of materials would fulfill the requirement set forth in the proposal, the Department would expect States to resort to it only if the first distribution method could not be arranged. In the Department's view, the first method, which involves more direct contact with the targets of this outreach

[3] The preamble to the proposal regarding the Food Distribution Program also discusses this referral issue (43 FR 57803; December 8, 1978).

effort, would prove more effective than the second method described.

In addition to recipients of unemployment compensation, the proposal requires that States also endeavor to make similar distribution arrangements for participants in other assistance programs. The proposal lists several programs whose participants would be likely candidates. The programs include: the WIC and Commodity Supplemental Food Programs; public assistance, general assistance, and the Supplemental Security Income programs; and, assistance programs administered by the Department of Housing and Urban Development. States should identify other assistance programs, in addition to those listed, and attempt to include them in this effort. When making arrangements, priority should be given to distribution arrangements that include personal contacts. Where these arrangements cannot be made, periodic mailings to the participants in these programs should be arranged.

As noted, the Food Stamp Act prohibits the Department from funding State agency outreach activities of a noninformational nature in areas where federally funded community action agencies are performing food stamp outreach. The sixth element that the Department requires in all outreach programs is the inclusion of the efforts of these Community Food and Nutrition Programs (CFNP's) into State agencies' outreach efforts. State agencies are required to identify where CFNP's are in operation and what food stamp outreach activities they perform. State agencies should plan their outreach programs so that the activities of the CFNP's complement the State agencies' outreach efforts. Through cooperation, State agencies will increase the efficiency and the effectiveness of outreach. In addition, the proposal requires that State agencies provide training and outreach materials to these groups to aid them in their outreach efforts. Improving the quality of the outreach activities performed by the CFNP grantees will likewise improve the overall outreach effort in the States.

The seventh proposed element is the identification and removal of barriers to participation. This is not solely an outreach activity. The Department believes, however, that outreach staff should be involved in this function. Outreach staff can identify barriers to participation by monitoring participation rates and complaints received through the State agencies' food stamp hotline services. Any participation barriers that are identified are to be brought to the attention of the officials in the State agency who are responsible for corrective action. In addition to identifying participation barriers in this way, outreach staff should be involved in removing participation barriers such as negative community attitudes, lack of Program information or lack of awareness of Program benefits.

The last of the basic requirements in the proposed rules is the requirement that each State agency operate a toll free hotline service. As with the use of volunteers, printed materials and media contracts, the use of hotlines is a relatively inexpensive method of providing Program information to large numbers of people. The regulation proposes that State agencies operate hotlines but does not require a minimum number of lines. It is not currently possible to gauge how many calls per month a food stamp hotline might receive on an ongoing basis, although presumably the number would be far less than those received during the transition period. State agencies should attempt to estimate the volume of calls their hotlines will receive by considering several variables such as the volume of calls experienced by other hotlines, the size of the target population and the hotline experience during the transition period. Based on these considerations and the ongoing monitoring of calls received, each State agency shall determine how many lines are needed, subject to FNS approval.

State agencies may staff their hotlines with volunteers, paid staff or both. In any case, however, the people operating the hotlines must be knowledgeable concerning food stamp procedures. Hotline operators must be able to handle complaints, send requested information out quickly and refer callers to local offices for more detailed information.

The regulations exempt the Alaska State agency from establishing a statewide hotline. This exemption was included because the telephone company in Alaska is unable to provide toll free telephone service to cover the entire State. As a substitute, the State agency must develop an alternate means of providing the services that would have been provided by statewide hotline. The alternate means are subject to FNS approval.

Staff. The proposed regulations contain outreach staffing requirements that are essentially an outgrowth of the present staffing requirements. Each State agency will be required to employ a full time food stamp outreach coordinator. Each project area will be required to employ a food stamp outreach coordinator who is required to spend enough time performing outreach functions so as to be able to carry out the responsibilities assigned. Both the State and local agencies are required to provide outreach staff with adequate clerical support so that outreach functions are performed. The difference between the current staffing requirements and the proposed requirements is that some State agencies will be required to hire additional outreach workers to aid the State outreach coordinator. The Department proposes that staff be hired based on the total number of eligible nonparticipants residing in each State. All States are required to employ one full time food stamp outreach coordinator. States with fewer than 250,000 eligible nonparticipants are not required to hire any additional outreach staff. States with between 250,000 and 500,000 eligible nonparticipants are required to employ one full time outreach worker in addition to the coordinator. States with over 500,000 eligible nonparticipants are required to hire two full time food stamp outreach workers in addition to the coordinator.

These changes are proposed because the department believes that there is a need in some States for additional staff. Several alternative staffing methods were considered. One possible approach was based on participation rates (i.e., the ratio of the number of participants to the estimated number of eligibles). This approach required that additional outreach staff be hired in States with low participation rates. The obvious drawback was that sparsely populated States with low participation rates would be required to hire more outreach staff than densely populated States with high participation rates even though there are many more eligible nonparticipants in the densely populated States.

In order to ensure that additional outreach staff are employed in States with the greatest need for increased outreach activity, the Department chose a staffing pattern based on total numbers of eligible nonparticipants. As proposed, States will compute the number of eligible nonparticipants they have by subtracting the number of participants they had in march of each year from estimates of potentially eligibles provided by the Department. This month was chosen to allow States to determine their staffing needs in time to include them in the Outreach Plans they must submit to FNS by July of each year. Those States that can use more recent data each year, i.e., April or May, and still comply with the July 1

submission date for the Outreach Plan may do so.

Attached, in appendix A, are the Department's estimates of the numbers of people in each State who are eligible for food stamp benefits under the new food stamp rules. The numbers of food stamp eligibles are based on data obtained in the 1976 Survey of Income and Education (SIE) conducted by the Bureau of the Census for the Department of Health, Education and Welfare. Approximately 151,000 households were sampled in the SIE throughout the United States during April through July 1976. Questions on participation in the Food Stamp Program, income assets and other socioeconomic data were gathered in the SIE.

The basic data collected in the SIE were "aged" using the Micro-Analysis of Transfers to Households (MATH) model developed by Mathematica Policy Research, Inc. for FNS to reflect the general demographic and economic conditions for July 1978. The SIE data were also adjusted for under-reporting of income and assets owned by low-income households. Based on the analysis of the related data, approximately 27.3 million persons were eligible for food stamps in July 1978 under the eligibility criteria set forth in the Food Stamp Act of 1977. These estimates will be updated each year. The updated estimates will be provided to the States in time for them to be used in planning the upcoming year's Outreach Plans.

Estimates of eligibles for Guam, Puerto Rico and the Virgin Islands are not included in the table in Appendix A because none of these areas were included in the SIE. The Department is now in the process of examining other data sources to derive estimates for the three areas. As soon as the estimates are obtained, they will be made available.

The Department also believes that the need for outreach staff at the project area level increases as the numbers of eligible nonparticipants in project areas increase. However, since there are no current population data available that can be used for setting project area standards, exact standards have not been formulated. Instead, the Department has developed local level staffing guidelines that can be used by State agencies when they design local level outreach operations. The guidelines vary the staff committed in project areas according to the size of the project areas. In project areas with average caseloads, the Department expects the local outreach coordinators to spend at least 20 percent of their time (or about one day per week) on outreach activities. While the Department's expectations would not necessarily be at the level for project areas with extremely small numbers of low income households, the Department's expectations would be at higher levels in large metropolitan areas and other project areas with very large numbers of low income households.

These are not absolute staffing standards but guidelines that would be used in the following manner during the reviews of local project area outreach operations. Local outreach operations will be measured against the required activities set forth in the proposed rules. If a project area is found to be in compliance with the requirements, the staffing guidelines would play no part in the review. However, if it is determined that the project area's outreach operations are out of compliance with the requirements in the proposal, the reviewer would look to see if the project area was committing staff to outreach in accord with the Department's expectations. The measurement against the guidelines would be done to determine whether a lack of staff commitment was a contributing factor in the project area's noncompliance and whether an increase in staff commitment should be required as appropriate corrective action.

Also set forth in the proposal are the duties that State and local coordinators are expected to perform. The lists are not intended to be all inclusive and, therefore, the coordinators' activities will not be restricted to the duties listed. The purpose of the lists is to describe the general types of activities that should be carried out at the State and local levels. While some activities are properly handled at both levels others are more properly assigned to one or the other. For example, the recruitment of volunteers should be handled by both the State and local coordinators. State coordinators should aim their efforts at groups, organizations and agencies that operate statewide or over a large portion of the State, such as the State Employment Service and State Health Department. Local coordinators should aim their efforts at more local groups, organizations and agencies, such as locally administered GA agencies. There are also situations in which both the State and local coordinators will have to work together, for example, the State coordinator recruiting the support of an agency's administration and the local coordinators recruiting the active assistance of the agency's local offices and personnel.

Monitoring. These proposed regulations revise the way that outreach activities are monitored by FNS at both the State and local levels. Currently, a system of outreach activity reports is used to monitor outreach operations. The Performance Reporting System, used to monitor most other Program activities, is only used to review State agencies' outreach plans to ensure that they are complete and timely. The Department's proposal would integrate the monitoring of outreach with the monitoring of other Program operations in the Performance Reporting System. Additionally, the requirements for outreach activity reports would be changed. The semiannual outreach activity reports currently submitted by State agencies to FNS will be eliminated. The monthly outreach activity reports submitted by project areas to State agencies will be retained but altered. The Federal requirement for frequency of submission will change to quarterly, although State agencies may retain the monthly requirement. The Federal requirements for content will be dropped leaving the content of these reports to be determined by State agencies.

Experience with the current system has demonstrated that it is not an effective way to monitor outreach. The separation of the outreach monitoring system from the Performance Reporting System reinforces the segregation of outreach activities from other Program activities. This segregation, in turn, lessens the effectiveness of the outreach monitoring activities. Outreach should be an integral part of overall Program administration. Its success and failure must be examined and measured in relation to other Program activities. By monitoring through an independent system, the relationship of outreach to other Program activities may have been obscured. The Department believes that integrating outreach reviews with the Performance Reporting System will result in a significant improvement in outreach effectiveness. In addition, the operation of two independent monitoring systems is inefficient. The proposal will eliminate this inefficiency.

The revisions should also make outreach monitoring more responsive to the changing informational needs of Federal and State reviewers. Currently, the content of outreach activity reports is mandated by Federal rules. Yet, as was noted at the outset, successful outreach Programs must vary from State to State. Therefore, the information needed to effectively monitor these varying outreach efforts is different from State to State. The present system has

not adapted well to the differing natures of the outreach programs. The result is often a report which does not contain precise or relevant information. The Department's proposal will allow State agencies to determine the content of the project area activity reports so that they provide information that augments information gathered by the Performance Reporting System and aids State agencies in planning and reviewing outreach efforts.

Another, and perhaps more important, reason underlying the Department's revisions is the failure of the current system to thoroughly review outreach activities. Experience indicates that the current system is not the most appropriate method to assess whether outreach activities are performed in compliance with Federal rules and State Outreach Plans, especially at the local level. This is because of the rigidity of the system's requirements and the way it segregates outreach from other Program operations. The Department believes that the Performance Reporting System reviews will not only prove to be more adaptable to differing outreach programs but will provide State and Federal reviewers with a better, more in-depth look at what is actually being done in an area.

Another proposed revision of the current outreach monitoring system is the requirement that State outreach officials conduct formal evaluations of outreach activities at least once each year. The evaluations are to be aimed at assessing the effectiveness of the outreach activities that the State agency has been performing. The perspective is different than the monitoring done through the Performance Reporting System and the project area reports. The latter two sources focus on compliance monitoring; they monitor whether activities are being carried out in conformance with Federal rules and approved State Outreach Plans. The evaluations are directed at giving State outreach officials insights into how effective their activities are at reaching their goals regardless of whether Federal requirements are being met.

To make evaluations even more useful, the Department proposes that representatives of organizations and groups that are included in the State agencies' outreach efforts, as well as representatives of organized client groups, be invited to participate in the evaluations. The Department believes that their participation will provide pertinent information.

The evaluations should identify which outreach activities were effective and why certain activities were ineffective so that State outreach officials can improve the next year's outreach activities. Secondly, the evaluations should be designed to reveal whether there is a need for immediate modifications in activities currently being performed, such as providing new types of fresh supplies of printed materials or arranging for the training of volunteers to improve their effectiveness.

The Department believes that the new monitoring system will be a significant improvement over the current system. Not only will better information be gathered for the purposes of judging compliance with Federal rules and State Outreach Plans, but better planning will result from the assessments of the effectiveness of activities.

Planning. The proposed rules describe, in general terms, the process that State outreach coordinators should follow in developing their Outreach Plans and list specific requirements for the contents of the Plans. Just as outreach programs will vary from State to State, the planning process will vary. The regulations pertaining to outreach planning reflect this need for flexibility. The regulatory emphasis is primarily on the product of the planning process.

The proposed outreach planning requirements reflect the Department's view that outreach should be integrated with other Program activities and should be designed individually by each State. The proposal directs State coordinators to identify existing information sources regarding participation and to use these sources when formulating outreach plans. The proposed regulations contain a list of information sources that should prove useful in the planning process for many States. The listed sources are reports and records kept in accordance with the Food Stamp Regulations. Some are directly related to outreach activities, such as project area outreach reports, Performance Reporting System reviews of outreach activities, the annual outreach evaluations, and records of past outreach efforts. Other sources of information are not primarily outreach sources but do contain information that can be useful in outreach planning. These sources include FNS–256 participation data, data collected on the need for bilingual services, records of complaints received through the State complaint procedure and information collected to comply with the civil rights requirements. The Department intends that State outreach coordinators analyze the information from appropriate sources to determine what outreach activities should be planned for the upcoming year.

The proposed rules regarding the contents of Outreach Plans specify certain information requirements. For the most part, required Outreach Plan information describes actions required by other provisions in this proposal. For instance, State agencies are required to establish referral systems. The Outreach Plans must describe the systems which will be established to comply with the referral requirements. Similarly, the proposed rules require State coordinators to design and use systems for monitoring local outreach activities. The Outreach Plans must describe how the systems will work. The Outreach Plans must also contain information regarding the State agencies' plans for staffing, using volunteers, targeting specific groups and areas for special efforts, and removing participation barriers. Thus, an Outreach Plan, if completed in accordance with the proposed regulations, will be a synthesis of an assessment of a State's outreach needs; and analysis of the various factors impacting on outreach activities; and a description of how the State plans to comply with the basic requirements contained in the proposal.

The proposed FNS approval process for the Plans is slightly different than current procedures. The Department proposes to approve or disapprove Outreach Plans within thirty days of the Plans' submission to FNS. The rules provide that any plans not responded to within that timeframe may be considered approved. Additionally, FNS will be allowed to approve some portions of a State agency's Plan while disapproving other portions.

Both of these changes are aimed at improving the Plan approval process. By expediting Federal action on Plan submissions, State agencies will be better able to timely respond to required changes. By limiting the approval process to 30 days, State agencies will be allowed more time to integrate approved outreach activities with other Program activities. The "partial approval" provision should also expedit the initiation of new outreach activities. No longer will entire Outreach Plans be held up because relatively minor changes are required. The partial approval approach should result in the implementation of needed activities while allowing time for corrective adjustments.

Implementation

The Act does not contain any specific timeframes for the implementation of the state complaint procedures or outreach rules. It does, however, direct the Secretary to implement the Act

"* * * as expeditiously as possible consistent with the efficient and effective administration of the Food Stamp Program." While, as previously noted, the Act does not have a requirement for the proposed State complaint procedures, implementation thereof is also desirable expeditiously. With this in mind, the Department developed the following implementation schedules for these regulations.

State Complaint Procedure. State agencies shall implement a complaint procedure in accordance with the requirements contained in final regulations no later than October 1, 1979. The State agencies shall request any additional funds needed for operation of the complaint procedure in the State Food Stamp Program Budget to be submitted August 15, 1979 for Federal Fiscal Year 1980.

Outreach. State agencies shall develop outreach Plans based on the final outreach regulations and submit them to the appropriate FNS Regional Office for approval. These Outreach Plans shall be sent to the Regional Office by August 15, 1979. FNS will review the Outreach Plans according to the provisions of these regulations. The activities contained in the approved plans, with one exception, shall be implemented on October 1, 1979. The exception is the requirement for telephone hotline services. These services shall be implemented at the time final outreach regulations are published. The reason for implementing the hotline requirement separately is to avoid an interruption in hotline services. The regulations published on October 17, 1978 required that States operate hotline service during the period of transition from the old program rules to the new program rules. The transition period, however, will end before October 1, 1979. Therefore, in order to ensure a continuity of hotline service and avoid the dismantling and subsequent reestablishment of hotline services, the hotline requirements will become effective earlier than the other requirements. At the time the hotline requirements in these ongoing regulations become effective, they will supersede the requirements in the October 17, 1978 regulations. Therefore, State agencies should adjust their hotline services, if an adjustment is needed, to bring them into compliance with these requirements.

Comment Period

In order to ensure that this implementation schedule is met, Robert Greenstein, Acting Administrator of the Food and Nutrition Service, decided to limit the comment period on these proposed regulations to 45 days. The reason for shortening the comment period by 15 days is to allow as much time as possible between the issuance of final regulations and August 15, 1979, so that States can adequately prepare their outreach plans.

If the comment period lasts for 60 days, the Department foresees final regulations being issued about mid-June 1979. This would give the States only two months to prepare their outreach plans. If the comment period is limited to 45 days, the Department foresees final rules being issued at the beginning of June. This would give States two and a half months to prepare their outreach plans. Since the preparation of the outreach plans includes the solicitation and consideration of public input, States will need the half month more time allowed by the 45 day comment period. It should also be remembered that during this same period of time, June through August 1979, States will be finishing the conversion of their caseloads to the new program rules and preparing their Plans of Operation and budgets for fiscal year 1980.

Consideration was given to changing the August 15 submission date but the Department believes that if the date is set back, for example, to September 1, 1979, there would be significantly less assurance that approved outreach plans would be ready for implementation on October 1, 1979. The October 1 date cannot be changed since currently approved outreach plans expire on this day. The alternative the Department chose, then, is to shorten the comment period and thus, allow more time for States to prepare their plans.

Commenters are urged to begin their review of the proposed regulations as soon as possible and to mail their comments sufficiently in advance of the 45th day to ensure timely receipt. Comments received pursuant to this proposal will be available for public inspection and copying at the Food and Nutrition Service, 500 12th Street, S.W., Washington, D.C., during regular business hours.

Appendix A

Estimated eligibles under the Food Stamp Act of 1977 (New Program)—Thousands of people:

State and new program eligibles

Alabama	726
Alaska	53
Arizona	337
Arkansas	467
California	2149
Colorado	276
Connecticut	239
Delaware	67
District of Columbia	104
Florida	1290
Georgia	1031
Guam	—
Hawaii	136
Idaho	95
Illinois	1207
Indiana	474
Iowa	225
Kansas	227
Kentucky	701
Louisiana	791
Maine	144
Maryland	375
Massachusetts	473
Michigan	866
Minnesota	365
Mississippi	659
Missouri	646
Montana	99
Nebraska	160
Nevada	64
New Hampshire	71
New Jersey	669
New Mexico	235
New York	1989
North Carolina	1011
North Dakota	76
Ohio	1211
Oklahoma	386
Oregon	202
Pennsylvania	1291
Puerto Rico	—
Rhode Island	100
South Carolina	553
South Dakota	79
Tennessee	742
Texas	2359
Utah	124
Vermont	63
Virgin Islands	—
Virginia	657
Washington	373
West Virginia	298
Wisconsin	318
Wyoming	41

The Department proposes that Parts 271 and 272 be amended to include the following provisions:

PART 271—GENERAL INFORMATION AND DEFINITIONS

Section 271.6 is amended by adding paragraph (a) to include the following provisions as follows:

§ 271.6 Complaint procedure.

(a) *State Agency Responsibility*— (1) *General Scope.* The State agency shall maintain a system for handling complaints filed by participants and potential participants, including complaints received through the hotline service as specified in § 272.6(b)(8). The State agency shall be responsible for recording and investigating program complaints and correcting deficiencies identified by complaints.

(2) *Staffing.* (i) The State agency shall designate a person at the State level to coordinate all activities related to the

handling of program complaints. Persons designated as coordinators shall be knowledgeable in all aspects of program operations. The State agency shall ensure that staff designated to handle complaints have ready access to appropriate officials responsible for correcting problems.

(ii) In addition to desseminating the tool-free hotline numbers according to the Outreach requirements in § 272.6(b)(8), the State agency shall display in certification offices and where possible, in issuance offices, the mailing address and phone number for filing complaints at the State level. If a State elects to establish a two-tier complaint procedure, the mailing address and phone number for filing complaints at the local level shall also be displayed. States may operate a separate toll-free hotline service specifically to handle complaints, States which elect to use a separate hotline for complaints will not be required to have the Outreach hotline handle complaints. The Alaska, State agency is exempted from the requirement for maintaining toll free hotline service to handle complaints. It shall, however, provide an alternate means for participants and potential participants to file complaints.

(3) *Complaint system.* States shall have two options in administering the system for handling complaints which are:

(i) The State agency may elect to handle all complaints at the State level; or

(ii) The State agency may elect to use a two-tiered complaint procedure where complainants have the right to file complaints directly at either the State or project area level.

(4) *Complaints.* (i) Complaints may be filed in person, by telephone, or in writing by the complainant or through another person or an agency acting on behalf of the complainant at the State level, or the project area level if the State uses a two-tiered complaint system. The complainant shall have the right to file a complaint directly at the State level regardless of the type of complaint system used by the State.

(ii) States may limit action to complaints filed no later than 60 days following the alleged incident.

(5) *Receipt of Complaints.* (i) The official receiving the complaint shall determine immediately if the complainant alleges discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap. In these instances, the complaint shall be handled in accordance with § 272.7.

(ii) The official receiving the complaint shall determine immediately whether the complaint could be pursued through a fair hearing. If the complaint concerns level of benefits, eligibility, or a denial or termination, the complaint shall be handled through the fair hearing system in accordance with § 273.15. The official receiving the complaint shall explain to the complainant how and where to request a fair hearing, the availability of continued benefits if appropriate, and the timeliness standards for requesting a fair hearing and receiving a decision.

(iii) Complaints regarding such areas as processing standards and service to participants and potential participants shall be handled by this complaint procedure unless the State agency determines that resolution of the problems could be more expeditiously and effectively handled by a fair hearing. Concurrent review of problems through the fair hearing system and the complaint procedure shall be at the option of the State agency.

(6) *Documentation of Complaints.* Immediately upon receipt of complaints subject to this procedure, the official receiving the complaint shall record the following:

(i) Name, address and telephone number or other means of contacting the person making the complaint;

(ii) The office which is the subject of the complaint;

(iii) The specific nature and date of the incident or the aspect of program operations which caused the person to file the complaint; and

(iv) The date the complaint was filed.

(7) *Minimum requirements of project areas for handling program complaints when the State elects a two-tiered system.* The project area shall take the following actions to resolve problems identified by a complaint:

(i) Investigate and evaluate the complaint;

(ii) Recommend action(s) to officials responsible for correcting the problem;

(ii) Notify the State coordinator in writing, within 60 calendar days of receipt of the complaint, of the action(s) taken or the actions the project area will take or reasons why no action will be taken to resolve the problem.

(iv) Notify the complainant within 60 calendar days after receiving the complaint of actions taken or actions that will be taken to resolve the problem or the reasons why the project area is not able to take action. An example of a situation in which the project area could not take action would be a complaint protesting provisions contained in the Act and regulations.

(8) *Minimum requirements for State level handling of program complaints.* State agency action on complaints is required whether the State handles all complaints at the State level or elects a two-tiered system. The following are the minimum State agency responsibilities:

(i) In States using a two-tiered system, when the complainant contacts the State level directly, the complaint may be referred to the project area for handling with the consent of the complainant;

(ii) The State level shall take the following actions when handling complaints:

(A) Investigate and evaluate the complaint;

(B) Recommend action(s) to officials responsible for correcting the problem;

(C) Notify appropriate project area of complaints that are being pursued at the State level if the State uses a two-tiered system;

(D) Notify complainant within 60 calendar days after receiving complaint of actions taken or actions that will be taken or the reasons why the State agency will not take action to resolve the problem.

(iii) The State coordinator shall maintain records by project area of all complaints received and the responses to the complaints.

(iv) The State coordinator shall conduct an analysis of the project area responses to complaints and the records concerning complaints at least semiannually. The State complaint coordinator shall review and analyze complaint records, by project area, to identify the emergence of patterns of problems in local offices and/or project areas and problems which are occurring throughout the State;

(v) Immediately upon completion of the semiannaul analysis, the State complaint coordinator shall provide the results of this analysis to the Performance Reporting System coordinator for appropriate action and inclusion of the problem in either a project area or State Corrective Action Plan in accordance with § 275.16 of this Chapter. The information to be provided to the Performance Reporting System coordinator shall include but not necessarily be limited to:

(A) Identification of patterns of problems in local offices and/or project areas;

(B) Identification of deficiencies which are occurring throughout the State;

(C) Identification of causes of the deficiencies if determined by the semiannual analysis; and

(D) Date relative to complaints which indicate that a pattern may exist,

however, the data is insufficient and inconclusive in terms of the causes and extent of the pattern or trend.

(9) *Monitoring.* (i) State agencies shall monitor project area compliance with the requirements established by this section through the Performance Reporting System management evaluation reviews if the State uses a two-tiered complaint system.

(ii) FNS shall monitor all aspects of State compliance with the complaint procedure requirements through the Performance Reporting System.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

New § 272.6(a), (b), (c), and (d), previously reserved, are added and § 272.6(e) is revised. All read as follows:

§ 272.6 Outreach

(a) *General purpose.* (1) State agencies shall design and administer outreach programs that use informational and noninformational techniques to:

(i) Inform low income households about the application process and availability and benefits of the Program;

(ii) Enlist the coopertion of other agencies and organizations in disseminating program information and facilitating the participation of eligible households;

(iii) Determine reasons for nonparticipation; and

(iv) Assist in formulating and implementing actions to remove barriers to participation.

Informational outreach is the conveying of information about the Program through such means as publications, telephone hotlines, films, media and face-to-face contracts. *Noninformational outreach* is the provision of tansportation to certification or issuance offices or similar physical program support. FNS will not reimburse State agencies for expenditures made for noninformational outreach services that duplicate noninformational services provided by federally funded community action agencies (CAA's).

(2) There are many factors that State agencies must take into consideration when designing outreach programs. Some of these factors, such as the rural-urban composition of a State, the available media resources and the size of the low-income population, can vary widely from one State to another. Thus, outreach programs must be specifically designed to address the circumstances in each State. Certain basic techniques and activities, however, shall be incorporated into each program. The following minimum requirements define these common elements. State officials shall ensure that the outreach activities described in the minimum requirements are incorporated into their outreach efforts. However, outreach efforts should not be limited to these activities where additional activities could efficiently and significantly increase participation. State agencies are to regard the minimum requirements as a foundation for outreach programs designed to meet special circumstances within the State.

(b) *Minimum requirements.*—(1) *Volunteers.* (i) Volunteers shall be recruited by State agencies to assist outreach staff in achieving the outreach program's objectives. Volunteers shall be recruited from other government agencies, private agencies, organizations, groups, and from the public. State agencies shall work to enlist the assistance of State and local health departments; local agencies that administer general assistance programs; social services agencies; the Social Security Administration; the Bureau of Indian Affairs; agencies administering the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP); the Extension Service, especially where the Expanded Food and Nutrition Education Program (EFNEP) is in operation; the State Employment Service; State agencies administering Unemployment Insurance programs; vocation and rehabilitation agencies; Indian tribal organizations; Community action agencies; senior citizens' organizations; churches and religous organizations; legal aid organizations; migrant service organizations; retailers authorized to redeem food stamps; and other agencies and organizations working with low-income people. In addition to these groups, State agencies shall contact any other agency, organization, or group which might be willing to assist in the outreach effort.

(ii) In planning volunteer recruitment efforts State agencies shall determine where prospective volunteers would be most useful in the outreach effort. Volunteers may, among other functions, participate in the State agencies' referral system; distribute informational materials; act as authorized representatives; provide transportation to and from certification and issuance offices; assist households in completing applications; accompany households to interviews; act as language interpreters; assist the certification staff in prescreening applications; and display posters describing the Food Stamp Program. In order to ensure that volunteers are used as effectively as possible, State agencies shall provide them with training in food stamp policy and procedures.

(iii) The initial contact that State agencies make to enlist the assistance of groups, agencies and organizations shall be made in person whenever possible. Where an initial contact cannot be made in person it shall be made in writing and followed by a telephone call or a psersonal visit. At the time the initial contact is made or shortly afterward, the State agency shall provide the group contacted, or its representative, with information about the Food Stamp Program, the outreach program and the role envisioned for prospective volunteers. When individuals or groups agree to participate in a State agency's outreach efforts, the State agency shall act promptly to incorporate their aid into the overall outreach program.

(2) *Referrals.* The establishment and operation of a referral system may be the most important element of a State agency's outreach effort. State officials shall emphasize the use of referrals in the design of outreach programs.

(i) State agencies shall establish referral systems through which people who are potentially eligible for participation in the Food Stamp Program are directed to an office where they can file an application. These systems shall include all local public assistance (PA) offices and offices of State agency adminstered general assistance (GA) programs. Applications for food stamp benefits shall be readily available at these offices. Applicants for PA or State agency administered GA benefits who are not processed for food stamp benefits as provided for in § 723.2(j) of this chapter shall be given applications for food stamp benefits and directed to the local food stamp office for further processing. State agencies shall take appropriate steps to contact and incorporate other agencies and organizations into the referral systems. These organizations and agencies shall include, but not be limited to, the Social Security Administration; the State agencies responsible for administering workmen's compensation programs, the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP); Veterans Administration offices; the Extension Service, especially where EFNEP is in operation; local agencies administering general assistance programs; agencies administering medicaid; the Bureau of

Indian Affairs; the State Employment Service; churches; agencies administering programs under Title III of the Older American's Act and othe programs serving the elderly; agencies and organizations administering emergency assistance programs; community action agencies; social service agencies; housing authorities; senior citizens' organizations; legal aid organizations and other organizations and agencies working with low-income people. When contacting agencies, groups and organizations to enlist them into the referral system, State agency's shall follow the procedures in paragraph (b)(1)(iii) of this section.

(ii) State agencies shall arrange a referral service with agencies adminsterin the WIC and Commodity Supplemental food programs through which food stamp applicants who appear eligible for benefits from these programs are referred to local WIC and Commodity Supplemental Food Program offices. Printed materials, such as posters, fliers, and pamphlets, that explain the WIC and Commodity Supplemental Food Programs shall be made available at local food stamp offices. These printed materials shall be supplied by the agencies administering the WIC and Commodity Supplemental Food Programs. Applicants and recipients who are pregnant, who have children under five years of age (or under six years of age for the Commodity Supplemental Food Program), or who express interest in these programs shall be referred to local offices that administer these programs. This referral service shall be operated in all areas where the WIC Program or Commodity Supplemental Food Program are in operation. A referral service shall also be established with the Social Security Administration so that any food stamp applicant who is 65 years of age or older, blind, or disabled and who is not receiving Supplemental Security Income (SSI), is referred to the local Social Security office for more information about SSI benefits.

(3) *Printed materials.* (i) State agencies shall make available printed materials such as pamphlets, fliers and posters that contain basic information about the following items: eligibility requirements and program benefits; application procedures including how to obtain and file applications; the applicants' rights to receive applications when they are requested, file applications the day they are received, and receive coupons (if determine to be eligible) within 30 days of filing applicaitons; the Food Stamp Hotline numbers; and, the locations and hours of operation of certification offices. This material shall be in languages other than English as required in § 272.4(c) and shall include a statment that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin, or political beliefs.

(ii) State agencies shall make these printed materials, as well as application forms, available at local food stamp and welfare offices and at offices of State agency administered general assistance programs. In addition, State agencies shall endeavor to make these materials and applications available through Employment Service Offices. Unemployment Insurance offices, State Offices of Economic Security, Social Security offices, offices of locally administered and Bureau of Indian Affairs administered general assistance programs, WIC clinics and CFSP offices, chruches, senior citizens' centers, and other Federal State and local agencies that have contacts with low-income people. State agencies shall also make applications and printed materials available to any organization upon request.

(iii) FNS will supply State agencies with posters and pamphlets containing information regarding foods containing substantial amounts of the recommended daily allowances of protein, minerals and vitamins; menues making use of these foods; the relationship between health and diet; and other food programs run by USDA. State agencies shall display the posters and make the pamphlets available at all food stamp and public assistance offices. Applicants shall be informed of the availability of these materials at the time of initial application and recertification.

(4) *Media contacts.* State agencies shall contact the news media on a regular basis to provide current information on the Program, including announcements regarding the semi-annual and annual changes in allotments and eligibility standards. State agencies shall seek the cooperation of the media, including foreign language media and weekly newspapers, in disseminating information about the Program through public service announcements, press releases and human interest stories.

(5) *Special efforts.* (i) State agencies shall develop and conduct special outreach efforts directed toward specific groups of low-income people. At a mininum these efforts shall be aimed at participants in AFDC, SSI, general assistance and unemployment compensation programs who are eligible for food stamp benefits but who are not participating in the Program; at Indians living on reservations where the State agency is running the Program on the reservation; and at migrant households that periodically reside in a State. In addition, State agencies shall monitor participation rates and direct special outreach efforts at groups that have comparatively low rates of participation. These groups may include the elderly, disabled, various ethnic groups, minorities, and the working poor.

(ii) State agencies shall develop and conduct special outreach efforts directed toward low-income residents of specific geographic areas. These areas shall be identified through the analysis of the participation data of areas in each State. Annually, State agencies shall target at least two areas with comparatively low rates of participation or high numbers of eligible nonparticipants for special efforts.

(iii) In addition to the special efforts described in paragraphs (b)(5) (i) and (ii) of this section, State agencies shall endeavor to arrange for the direct distribution of outreach materials to participants in other assistance programs.

(A) State agencies shall endeavor to arrange with the State agencies administering unemployment compensation programs for the direct distribution of food stamp outreach material to recipients of unemployment compensation. Where possible, this direct distribution shall be the individual handing out of food stamp information to each person who applies for unemployment benefits at an unemployment office. When a direct method of distribution such as this cannot be arranged, State agencies shall arrange for mailings of food stamp outreach materials no less frequently than once every six months to unemployment compensation recipients.

(B) State agencies shall also endeavor to arrange for the direct distribution of food stamp outreach materials to participants in other programs. When making arrangements, priority shall be given to distributing the materials at the offices of the programs. Where that type of distribution cannot be arranged, the possibility of periodically mailing the materials shall be pursued. Candidates for these distribution procedures include, but are not limited to, recipients of public assistance, general assistance and SSI benefits; participants in the WIC and Commodity Supplemental Food Programs; and recipients of assistance payments administered by the Department of Housing and Urban Development.

(6) *Cooperation with Community Food and Nutrition Program (CFNP) grantees.* State agencies shall identify those CFNP grantees that are receiving grants for the purpose of conducting food stamp outreach. When practicable, State agencies shall coordinate with State Departments of Economic Opportunity, or directly with local grantees, as the grantees are planning their activities. This will enable State agencies to anticipate and coordinate the total outreach effort between their own employees or volunteers and those of the CFNP grantees. In areas where federally funded CAA's are conducting noninformational outreach activities, FNS will not reimburse State agencies for expenditures for noninformational outreach activities that duplicate those of the CAA. However, State agencies shall offer training and outreach materials to those CAA's and any other CFNP grantees and shall, where possible, integrate the efforts of these agencies into the overall outreach effort. A CAA and a State agency may both provide informational outreach in the same project area. Where this occurs, the efforts of both agencies should be coordinated to the maximum extent possible in order to heighten the effectiveness of the activities.

(7) *Removing participation barriers.* The State agency shall identify factors which inhibit participation in the Program and develop appropriate corrective action to remove these barriers. When a State agency determines that participation is being inhibited and that some corrective action is required, the procedures required in Part 275 of this chapter the Performance Reporting System, shall be followed. Factors that may influence participation and which shall be reviewed periodically include, but are not limited to, the following items:

(i) Accessibility of certification and issuance services;

(ii) Degree to which out-of-office certification procedures and mail issuance are used;

(iii) Availability and simplicity of application forms;

(iv) Availability of bilingual workers or volunteers and printed materials in languages other than English;

(v) Effectiveness of printed materials and media contracts;

(vi) Quality of service provided at certification and issuances offices;

(vii) Existence of negative community attitudes toward the Program; and

(viii) Number of certification staff and the racial and ethnic composition of that staff as compared to the low-income households and minority groups in the project.

(8) *Hotlines.* State agencies shall operate toll free hotline services at the State level that can be used by participants and potential participants to secure program information and application forms, lodge complaints and generally facilitate their participation in the Program. The Alaska State agency is exempt from the requirement for maintaining a toll free hotline at the State level. The Alaska State agency shall, however, provide an alternative means for participants and potential participants to secure program information and applications, lodge complaints and make inquiries. The alternate procedures are subject to FNS approval through the Outreach Plan submitted in accord with paragraph (e) of this section.

(i) The hotline service shall be available during all normal business hours. The hotlines shall be called "Food Stamp Hotlines" and shall be listed as such with local telephone companies. State agencies shall ensure that the hotline numbers are available through the directory assistance services in their States.

(ii) The hotline service shall be staffed with State agency employees or volunteers. All operators must be knowledgeable in Program rules and State agency procedures so that accurate information is desseminated, households are referred to the proper offices for further information or services, and complaints are turned over to the proper officials for resolution. Records shall be maintained on the number of calls and the nature of the inquiries. The hotline number shall be posted in local welfare offices and included on the printed materials as required in § 2721.6(b)(3).

(iii) State agencies shall determine the appropriate number of telephone lines which shall be adequate to handle the number of callers. The initial determination shall be based on prior experience with hotline services, such as the hotline service operated during the transition from the old program rules to the new program rules. Adjustments in the number of telephone lines shall be made if it is determined through monitoring that there are too many or too few lines in operation. State food stamp hotlines may also serve other programs, but there must be enough lines so that food stamp callers are not denied telephone access. Local areas may operate hotlines and, in areas with large numbers of low-income households, are encouraged to do so.

(c) *Staff.* State agencies shall comply with the following minimum requirements for staffing their outreach programs.

(1) *State level.* (i) Each State agency shall employ one full time food stamp outreach coordinator who shall be responsible for ensuring that the State agency's outreach program is operated in compliance with these regulations. The outreach coordinator shall be given sufficient clerical support to carry out these duties. State agencies shall employ additional full time outreach workers, as required in this paragraph, to aid the outreach coordinator. The number of additional staff is based on the number of people in each State who are eligible for food stamp benefits but who are not receiving them (eligible nonparticipants). States with fewer than 250,000 eligible nonparticipants are not required to hire any additional staff. States with more than 250,000 eligible nonparticipants and less than 500,000 eligible nonparticipants shall hire one additional full time outreach worker. States with more than 500,000 eligible nonparticipants shall hire two additional full time outreach workers. The Department has generated estimates of how many eligible people there will be in each State following implementation of the new program rules. These estimates will be updated annually. State agencies shall compute how many eligible nonparticipants they have by subtracting the number of participants in March, as reported on their March FNS–256 Monthly Report of Participation and Coupon Issuance, from the estimates of eligibles provided by the Department. State agencies that have the capability may use participation data from April or May of each year provided the July 1 date for submission of the Outreach Plan is complied with. In addition, other outreach workers shall be employed as necessary to operate the State agency's outreach program effectively. Whenever possible, State agencies shall recruit their outreach workers form groups that are targeted for outreach efforts.

(ii) The State level outreach staff shall have the primary responsibility for planning and operating the State agency's outreach program. Their duties shall include, but are not limited to, the following activities:

(A) Developing and implementing annual State agency outreach plans;

(B) Monitoring and assessing the effectiveness of State and local outreach efforts, including organizing and conducting the annual outreach evaluations;

(C) Providing technical assistance to outreach personnel at the local level;

(D) Enlisting the support and assistance of agencies, groups and organizations such as the Social Security Administration, State Employment Service and State health departments, in the State agency's outreach efforts and ensuring that they receive necessary training;

(E) Designing and administering the State agency's referral system;

(F) Overseeing the operation of the State agency's food stamp hotline;

(G) Coordinating activities with other groups that perform food stamp outreach;

(H) Developing, or obtaining from FNS, the outreach printed materials and ensuring that adequate supplies are maintained;

(I) Establishing and utilizing media contacts; and

(J) Identifying barriers to participation and helping to formulate corrective action.

(2) *Local level.* (i) State agencies shall employ food stamp outreach coordinators in each project area. Local coordinators shall spend sufficient time to accomplish the activities specified in the outreach plan. Local coordinators shall be provided sufficient clerical staff to carry out outreach duties. Additional outreach staff shall be assigned to the local coordinator as necessary to achieve the goals of the outreach program. Whenever possible, the staff performing outreach at the local level should be recruited from the groups targeted for the outreach.

(ii) It is the responsibility of local level outreach staff to carry out outreach ctivities in each project area. Their duties include, but are not limited to:

(A) Providing the State outreach coordinator with information as requested;

(B) Enlisting local individuals, groups, agencies and organizations to assist in the outreach effort and ensuring that they receive necessary training;

(C) Establishing and utilizing media contacts;

(D) Distributing printed materials provided by State level outreach staff;

(E) Identifying and working to remove barriers to participation;

(F) Coordinating activities with other groups, agencies or organizations performing food stamp outreach in the project area; and

(G) Operating the referral system and extending it to include as many organizations and agencies as possible.

(3) *Contracts.* The activities in paragraph (b) of this section (Minimum Requirements) and any similar activities may be performed by agencies and organizations that are under contract with the State agency. The monitoring and planning activities specified in paragraphs (d) and (e) of this section shall not be performed by organizations and agencies outside the State agency. The contracting of outreach activities to other organizations and groups shall not relieve the State agency of the responsibility for adhering to the outreach staffing levels specified in this paragraph.

(d) *Monitoring.* State agencies shall develop a system for monitoring and evaluating State and local level outreach activities. The monitoring system shall provide the State agency with information regarding compliance with the State Outreach Plan and the effectiveness of outreach activities. State agencies shall include information gathered through the Performance Reporting System, Monthly Reports of Participation and Coupon Issuance, project area outreach reports, and formal outreach evaluations in this monitoring system.

(1) *Performance Reporting System.* State agencies shall monitor the efficiency and effectiveness of outreach programs through the Performance Reporting System as required by Part 275 of this chapter. The State outreach coordinator and outreach staff are encouraged to participate in the regular project area reviews. Outreach deficiencies noted in these reviews shall be brought to the attention of the State outreach coordinator for analysis and corrective action. As part of the annual State assessment required in Part 275 of this chapter, FNS will conduct a review of the efficiency and effectiveness of the State agency's outreach program.

(2) *Project Area Reports.* In order to assist the State outreach coordinator in monitoring local outreach efforts and in planning future outreach activities, the State agency shall require periodic, but no less often than quarterly, reports from project areas. These reports will supplement information gained from onsite reviews. State agencies shall tailor the reports so that they provide information that will demonstrate whether the local project areas are complying with the State Outreach Plan.

(3) *Evaluations.* State agency outreach officials shall conduct formal evaluations of outreach activities at least annually. These evaluations shall be aimed at assessing the effectiveness of the various outreach activities that were undertaken by the State and local agencies. State officials shall analyze why some activities have proved effective while others have not and shall initiate appropriate improvements. Participation in the evaluations shall not be limited to State agency staff. Representatives of organizations and agencies that participate in the State agencies' outreach programs as well as representatives of organized client groups shall be invited to participate in the evaluations. The results of the evaluations shall be used to make adjustments in ongoing activities (such as providing additional training to some volunteers) and to plan activities for the next year's outreach program.

(e) *Outreach Planning.* (1) *Process.* Annually, State agencies shall plan their outreach activities for the upcoming year. The Outreach Plans that are developed shall be based partly upon assessments and analyses of information collected from various sources. These sources include but are not limited to: The periodic project area outreach reports and formal outreach evaluations required by paragraph (d) of this section; records of inquiries received by the hotline service required by paragraph (b) of this section; records of complaints kept in accordance with the provisions of § 271.6 of this chapter; the needs assessments and service plans required by § 272.5; the FNS–256 Monthly Report of Participation and Coupon Issuance required by § 274.8(a) of this chapter; the non-discrimination reports required by § 272.7(h); the estimate of potentially eligible households provided by FNS; the project area reviews and corrective action plans required by Part 275 of this chapter; the data on non-English speaking people collected in accordance with § 272.4; and records kept on the effectiveness of the past years' outreach activities including records from past years' evaluations. In addition, State agencies shall plan their outreach activities so that the minimum requirements in paragraph (b) of this chapter are met.

(2) *Submission.* State agencies shall submit their annual Outreach Plans to the appropriate FNS Regional Office for approval, in accordance with the provisions in § 272.2(e).

(3) *Content.* Each Outreach Plan shall contain the following information:

(i) A summary of the outreach staff the State agency plans to use, including:

(A) Number of State and local level outreach staff (administrative and clerical) and the percent of time each will spend on outreach activities;

(B) Number of State level outreach staff working outside the State office and where they are located;

(ii) Copies of all required printed materials;

(iii) A description of the methods that will be used to recruit volunteers;

(iv) A summary of the kinds of agencies, organizations, and groups that will be asked to aid in outreach along with descriptions of the services they will be asked to perform;

(v) A list of agencies that have agreed to provide referral services;

(vi) The geographic areas in a State that have been selected to receive special outreach efforts in the coming year and a description of what the special efforts will be;

(vii) A list of target groups that have been selected to receive special outreach efforts and a description of what the special efforts will be;

(viii) A description of the State agency hotline operations, including the services and staff provided, the number of lines being used, and any local hotlines that are being operated;

(ix) An analysis of those aspects of program operations that appeared to hinder the participation of eligible households and a description of planned corrective action;

(x) A description of the methods that the State agency will use in planning and monitoring efforts at the local level, including reports that will be required;

(xi) Any other pertinent information that is necessary to provide FNS with a complete picture of the State's outreach efforts, including special instructions.

(4) *Approval.* FNS shall provide approval or the reasons for disapproval within 30 days of receipt of the Outreach Plan from the State agency. Those plans that have not been responded to within 30 days shall be considered to have been approved. FNS may approve portions of a State agency's Outreach Plan. If this occurs, State agencies shall implement the approved portions and revise and resubmit the unapproved portions.

* * * * *

(91 Stat. 958 (7 U.S.C., 2011–2027).)

Note.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of a draft impact analysis and certifies that a draft impact analysis has been prepared.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: April 3, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[Amdt. No. 143]

[FR Doc. 79-10929 Filed 4-9-79; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program, Existing Housing Program—Contract Administration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 882]

Section 8 Housing Assistance Payments Program, Existing Housing Program—Contract Administration

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed Rule.

SUMMARY: This rule would amend the Section 8 Existing Housing Program regulations to establish policies and procedures for securing contract Administrators (CA) to implement the Section 8 Existing Housing Program in municipalities, counties or similar localities where there is no Public Housing Agency (PHA), public body, or governmental entity able and willing to administer the program and if HUD decides not to administer the program directly. The purpose of these amendments is to specify criteria for determining whether there is a PHA, public body, governmental entity able and willing to participate and administer the program, and to outline the responsibilities of and procedures for selecting CAs when HUD decides not to administer the program.

DATE: Comments are due on or before June 11, 1979.

ADDRESS: Comments should be addressed to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. The Department is particularly interested in receiving comments concerning the conflicts of interest provisions (see § 882.312). A copy of each communication will be available during regular business hours at the Office of the Rules Clerk.

FOR FURTHER INFORMATION CONTACT: Roy Santos, Housing Programs Specialist Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755–8116 or 755–5380. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: Section 8(b)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) authorizes HUD to enter Housing Assistance Payments Contracts with Owners and otherwise perform the functions usually undertaken by a PHA where HUD determines that there is no PHA able to implement the Section 8 Existing Housing Program. The purpose of this proposed rule is to: (1) Specify criteria for determining whether there is a PHA, public body, or governmental entity able and willing to participate and administer the program in accordance with HUD policies and procedures; and (2) outline the responsibilities of an procedures for selecting CAs when HUD decides not to administer the program directly. A new Subpart C describing the new procedures is being published for comment. The procedures outlined in Subpart A and B of the Section 8 Existing Housing Regulations would apply except as modified by Subpart C. The following is a discussion of the proposed amendments:

1. Section 882.301, Applicability and Scope, outlines the new procedures, emphasizing that these provisions shall apply only when HUD has determined that it will administer the Section 8 program through a CA in the absence of eligible PHAs.

2. Section 882.302, Definitions, discusses the additional definitions applicable to the CA procedures, and discusses which definitions in § 882.102 are not applicable.

3. Section 882.303, Maximum Total CA Contract Commitment, states that Section 882.104(a) shall not apply and provides an alternate provision. Maximum fees paid to the CA shall be calculated in the same manner that PHA fees are currently calculated. The relative amounts of proposed CA fees will be considered, and will receive equal weight in the Factors for Award (see § 882.312(d)).

4. Section 882.304, Term of CA Contract, Lease and Housing Assistance Payments Contract, states that § 882.107 shall not apply. The new Section states the following: (a) The initial term of the CA Contract shall be for two years, with automatic annual renewals permitted for a total term not to exceed five years, unless earlier termination is requested by either party; (b) all Lease terms between Owners and residents shall be for one year but may be extended, and HAP Contracts shall have the same term as the Lease Agreement; and (c) no Lease or HAP Contract shall extend beyond five yers from the effective date of the CA Contract.

5. Section 882.305, Responsibilities of the CA, states that Section 882.116 shall apply except that HUD shall approve adjustments to Allowances for Utilities and Other Services.

6. Section 882.306, Responsibilities of the Owner, states that § 882.117(b) shall not apply. Owners may subcontract their responsibilities to private or public entities in accordance with the existing Regulations, as long as that entity is not responsible for the administration of the HAP Contract.

7. Section 882.307, Separate CA Contract, states that § 882.119 shall not apply. The new Section states that approved units in a CA's application shall constitute a project and be administered under a separate CA Contract. If a subsequent application is approved, the additional units will also constitute a separate project to be administered under a separate CA Contract.

8. Section 882.308, HUD Determination That There Is No PHA, Public Body, or Governmental Entity Able and Willing to Participate and Administer the Program, outlines the step-by-step process for obtaining the approval of the Deputy Assistant Secretary for Assisted Housing to administer a Section 8 Existing Housing program through a CA. This request will be considered when program implementation through a PHA is not possible.

9. Section 882.309, Notice to Unit of General Local Government, outlines the procedures necessary for notifying chief executive officers that HUD intends to administer the Section 8 Existing Housing Program through a CA. Notification shall (a) be sent within 10 working days of receipt of the approval of the Field Office's request to contract with a CA; (b) identify the number of units, by bedroom size and household types; and (c) state that local governments are given 30 days in which to object on the grounds that the proposed program would be inconsistent with their Housing Assistance Plan (HAP), or in the absence of a HAP to comment on the program.

10. Section 882.310, Advertisements for Contract Administrator Applications, states that a Field Office may advertise for applications, after its request has been received and approved by the Deputy Assistant Secretary for Assisted Housing and after local government comment period has expired. The advertisement shall be published at least once a week for two consecutive weeks and shall include basic program information such as the allocation area in which HUD is undertaking the program; the number, size and type (elevator, non-elevator) of housing to be used; submission dates; and range of fees. The advertisement should provide the greatest opportunity for property management firms, fair housing groups,

management consultants and other similar organizations to submit applications. It should also be noted that subsection (b)(4) prohibits an applicant who has any direct or indirect interest in the ownership and/or management of eligible units from entering Housing Assistance Payments Contracts for those units. HUD has made this determination in order to minimize both the potential for abuse in this inherent conflict of interest situation and the need for maximizing housing opportunities for eligible Families applying for the program.

11. Section 882.311, Submission and Receipt of Applications, identifies the content of applications and procedures to be followed upon receipt of the applications. Although this Section requires the same basic information as requested from PHAs participating in the regular Section 8 Existing Housing Program, all documents have been consolidated into a single submission. Additionally, other items are requested, including a description of proposed personnel and a statement of financial capability which will be used to rank applications for selection.

12. Section 882.312, Selection of Contract Administrators, outlines criteria to be used in the selection of applicants, such as understanding of program objectives and responsibilities, and previous outreach and administrative experience with both lower-income families and appropriate agencies. Applications from owners and/or managers who have a direct or indirect interest in units which would otherwise be available for occupancy by Certificate holders and which meet the program requirements shall only be considered if other applications are rejected as unacceptable, or insufficient applications are received. Preference will then be given to the applicants owning and/or managing the fewest units so that housing opportunities for Certificate holders will not be unduly restricted. An applicant who has been selected as a CA and who has any direct or indirect interest in the ownership and/or management of eligible units will be prohibited from entering into Housing Assistance Payments Contracts for those units. In addition, administrative costs proposed will be considered in the selection process.

13. Section 882.313, CA Contract and Schedule of Leasing, outlines provisions for reducing number of units and/or amount of fee due to a CA's failure to perform in accordance with the leasing schedule. Otherwise, this Section retains the same procedures applicable to the regular Section 8 Existing Housing Program.

14. Section 882.314, Certificates of Family Participation, states that Section 882.209(a)(2) shall not apply. Section 882.209(f) outlines appeal procedures for Families not satisfied with CA decisions.

15. Section 882.315, Term of Lease, states that § 882.210(f)(1) shall not apply. The revised Section states that the CA shall determine that the Lease is consistent with § 882.304, Term of CA Contract, Lease and Housing Assistance Payments Contract.

16. Section 882.316, Adjustments of Allowances for Utilities and Other Services, revises the last sentence of § 882.214(a) to state that the CA may make the determination that adjustments in the Allowance are required. Upon receipt of the CA's determination, the Field Office shall review the request, and may approve it as submitted, make modifications, or disapprove it, as appropriate.

A Finding of Inapplicability with respect to the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address specified above.

Accordingly, 24 CFR, Part 882 is proposed to be amended as follows by adding Subpart C, Administration of Program by Contract Administrator (CA) on Behalf of HUD.

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Subpart C—Administration of Program by Contract Administrator (CA) on Behalf of HUD.

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Authority.—Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Subpart C—Administration of Program by Contract Administrator (CA) on Behalf of HUD.

§ 882.301 Applicability and scope.

(a) The policies and procedures contained in this Subpart C apply when HUD: (1) Has determined that there is no PHA, public body, or governmental entity, able and willing to participate as a PHA to implement and administer the provisions of Subparts A and B of this part; and (2) has decided to act pursuant to Section 8(b)(1) of the U.S. Housing Act of 1937 through a CA in performing the functions ordinarily undertaken by a PHA.

(b) The provisions of Subparts A and B apply unless specifically made inapplicable to this subpart.

(c) Section 882.10.(b) shall not apply.

§ 882.302 Definitions

(a) The definitions of "Allowances for Utilities and Other Services" and "Annual Contributions Contract" in § 882.102 shall not apply to this subpart. The definition of Allowances applicable to Subpart C is set forth in paragraph (b) of this section.

(b) In addition to the definitions set forth in § 882.102, the following shall apply:

Allowances for Utilities and Other Services. An amount approved by HUD as an Allowance for the cost of utilities (except telephone) and charges for other services payable directly by the family.

Contract Administrator (CA). An entity which does not qualify as a PHA and is selected by HUD pursuant to this Subpart to perform the functions ordinarily undertaken by a PHA under Subparts A and B.

Contract Administrator Contract ("CA Contract"). A written agreement between HUD and a CA setting forth the obligations of the CA and HUD under this Subpart, to perform the functions of a PHA on the behalf of HUD. The CA Contract shall contain provisions concerning (1) Insurance and Fidelity Bond Coverage; (2) Books of Account and Records, Reports; and (3) the Depository Agreement in substantially the same form as contained in the standard ACC Part II for Section 8 Projects, HUD Form 52520C.

Project. The units approved in a CA's application and covered by a CA Contract pursuant to this subpart.

HUD Review Committee. A committee of Field Office staff established to review and rate applications submitted in response to a Field Office invitation.

(c) References to the Annual Contributions Contract (ACC), for purposes of this subpart shall be considered as references to the CA Contract.

(d) References to PHA for purposes of this subpart shall be considered as references to CA.

§ 882.303 Maximum total CA Contract commitment.

The provisions of Section 882.104(a) shall not apply. In lieu thereof, the following shall apply:

The maximum total amount that may be contracted for in the CA Contract shall not exceed the total of the Fair Market Rents for all the units, or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The fee for the regular cost of administration of the program and the HUD-approved preliminary costs shall be payable out of this maximum total amount.

§ 882.304 Term of CA Contract, lease, and housing assistance payments contract.

The provisions of § 882.107 shall not apply. In lieu thereof, the following shall apply:

(a) *Term of CA Contract.* The initial term of the CA Contract shall be two years with annual renewals permitted thereafter for up to three additional one year terms: *Provided,* That the total term shall not exceed five years. Renewal shall be automatic. The contract may be terminated by either party without cause upon issuance of a 60-day written notice, or as otherwise provided in the CA Contract in cases of default. If a CA Contract is terminated, HUD will administer the program on an interim basis until another CA is selected according to procedures in this Section.

(b) *Term of Lease.* The Lease shall be for one year; however, by mutual agreement of the Family and the Owner, the Lease may include a provision permitting termination upon 30 days advance written notice by either party.

(c) *Term of Housing Assistance Payments Contract.* The term of the HAP Contract shall be for the term of the Lease. However, if a Family continues in occupancy after the expiration of the Lease term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the CA and incorporated in the HAP Contract where appropriate), the HAP Contract shall continue in effect for the duration of the tenancy subject to the limitation stated in paragraph (d) of this section.

(d) *Renewals.* No HAP Contract or Lease term, including renewals and any continuation of tenancy beyond the stated term, shall extend beyond five (5) years from the effective date of the CA Contract for any project pursuant to this subpart.

§ 882.305 Responsibilities of the CA.

The responsibilities of a PHA under § 882.116 shall apply to the CA, with the exception that adjustments of any applicable Allowances for utilities and Other Services shall be approved by HUD (see §§ 882.116(n) and 882.316).

§ 882.306 Responsibilities of the owner.

The provisions of § 882.117(b) shall not apply. In lieu thereof, the following shall apply:

Any Owner may contract with any private or public entity to perform for a fee the management and maintenance services required by § 882.117(a): *Provided,* That such contract shall not shift any of the Owner's responsibilities or obligations. Such contract may not be entered into with the CA from which the Owner is receiving housing assistance payments for the unit.

§ 882.307 Separate CA Contract.

The provisions of § 882.119 shall not apply. In lieu thereof, the following shall apply:

(a) The units approved in a CA's application shall constitute a Project and be covered by and administered under a separate CA Contract.

(b) If the CA submits a subsequent application which is approved by HUD, the additional units shall constitute a separate Project and be administered under a separate CA Contract.

§ 882.308 HUD determination that there is no PHA, public body, or governmental entity able and willing to participate and administer the program.

(a) *Field Office Request.* In addition to the procedures outlined in § 882.121(a), the Field Office shall make an initial determination and submit to the Deputy Assistant Secretary for Assisted Housing a request for authority to contract with a CA pursuant to this subpart. Any request to contract with a CA shall be supported by:

(1) A determination by the Field Office that there is no PHA organized, able and willing to participate and administer the Section 8 Existing Housing Program in the particular jurisdiction where it is proposed to employ a CA.

(2) Appropriate documentation including:

(i) A showing that no approval applications (or an insufficient number to use all available units) were submitted in response to the invitation pursuant to § 882.203;

(ii) Statements from each existing local, State, regional, and neighboring PHA which could operate the program in the area but is unwilling to, identifying the reasons why it is unwilling to administer the program;

(iii) A statement from each affected locality legally capable of organizing or operating as a PHA to administer the program in the identified area explaining why it is unable or unwilling to establish another public body as a PHA or to perform as a PHA to administer the program;

(iv) A statement from each locality explaining that it has used best efforts to fulfill its commitment to provide lower-income housing by securing technical assistance for organized PHAs that are unwilling to participate in the program, or by presenting evidence that implementation of the program is administratively infeasible and that it is unable to perform as a PHA itself (see paragraph (a)(2)(iii) of this section);

(v) A showing that Field Office efforts to encourage submission of applications, establish additional PHAs, and offer technical assistance in resolving administrative problems were not successful; and

(vi) Any other pertinent information supporting the request.

(b) *Headquarters Approval.* The Deputy Assistant Secretary for Assisted Housing shall review the request and notify the Field Office whether the request has been approved.

§ 882.309 Notice to unit of general local government.

Pursuant to Section 213 of the Housing and Community Development Act of 1974, and 24 CFR, Part 891, within 10 days of receipt of approval by the Deputy Assistant Secretary for Assisted Housing of the Field Office request to administer the Section 8 Existing Housing Program pursuant to this Subpart, the Field Office shall send a notification to the chief executive officers of units of general local government of the localities which HUD has determined as primary areas from which Families to be assisted will be drawn. The notification shall:

(a) In all cases:

(1) Advise that HUD has determined that there is no PHA organized, able and willing to administer the Section 8 Existing Housing Program in a specified municipality, county or similar locality.

(2) Advise that HUD proposes to administer the program itself by entering into an agreement with a CA to perform

on behalf of HUD the functions ordinarily undertaken by a PHA.

(3) Indicate the number of units to be administered by the CA by bedroom size and the number of units by household type (elderly and/or handicapped, Family, large Family).

(4) Identify the primary areas from which Families to be assisted will be drawn.

(b) For areas with Housing Assistance Plans:

(1) Advise the local government(s) that, no later than 30 days after the date on which the letter of notification is received, objections to implementation of the program under this Subpart may be submitted on the grounds that the program would be inconsistent with the applicable Housing Assistance Plan.

(2) Invite submission of any other comments on behalf of the local government which are relevant.

(c) For areas without Housing Assistance Plans, invite the local government to submit, no later than 30 days after the date on which the letter of notification is received, comments which are relevant to the implementation of this program.

§ 882.310 Advertisements for Contract Administrator applications.

Section 882.203 shall not apply. In lieu thereof the following shall be required:

(a) *Publication.* Following approval of a request pursuant to § 882.308, and close of the comment period pursuant to § 882.309, the Field Office shall publish advertisements for a CA to administer the Section 8 Existing Housing Program in the municipality, county or similar locality identified by HUD pursuant to § 882.308. Each advertisement shall be published at least once a week for two consecutive weeks in (1) newspaper(s) of general circulation for the areas where the program is to be administered, and (2) appropriate trade journals. Simultaneously, the Field Office shall also notify minority media, business concerns included in HUD's Register of Section 3 businesses for the applicable jurisdictions, minority or civic organizations involved in housing and community development, property management firms, fair housing groups, management consultants, and other similar organizations.

(b) *Advertisement.* The advertisement shall:

(1) Indicate that HUD is requesting submission of an application for a CA, by an entity which does not qualify as a PHA, to administer on behalf of HUD the Section 8 Existing Housing Program.

(2) Identify the program area by geographical boundaries in which CA will be expected to undertake administration of the Existing Housing Program.

(3) Specify unit composition for the project by:

(i) The maxumum number of units, and

(ii) The unit size (number of bedrooms), type of housing structure (elevator, non-elevator), and whether for occupancy by elderly (including handicapped and disabled) or non-elderly (including Family and large Family).

(4) Stipulate that an applicant who has any direct or indirect interest in the ownership and/or management of units shall not be permitted to enter into a HAP Contract for those units.

(5) State that applications from entities that own and/or manage units directly or undirectly which would qualify for availability to Certificate holders will be considered only if there are no other acceptable applications.

(6) Specify that HUD may select one or more CA(s) from the approvable applications, and consideration shall be given to providing families the broadest geographical choice of units pursuant to § 882.103(c).

(7) Set the deadline date and time for submission of applications (which shall be at least 30 but not more than 45 calendar days from the date of the first publication).

(8) State that application packets including forms, copies of Program Regulations, and applicable Fair Market Rents and Income Limits may be obtained from the Field Office.

(9) Identify the maximum fee for preliminary costs and fee for regular costs of administration, pursuant to § 882.303.

(10) Give such other basic information as the Field Office considers necessary.

§ 882.311 Submission and receipt of applications.

(a) *General.* Section 882.204 shall not apply. In lieu thereof the following shall be required: An application shall be submitted to the field Office on or before the deadline specified in the advertisement. Applications shall not be opened until after this deadline for submission. The date and time of receipt at the Field Office shall be stamped on the outer cover of the application. Any application received after this deadline shall be returned.

(b) *Contents of Application.* The application shall be signed by the authorized representative of the applicant. The application shall be submitted in accordance with the instructions and forms prescribed by HUD and shall contain:

(1) A certified statement indicating the number of units within the applicable Fair Market Rent limitations which either are owned and/or managed, directly or indirectly, by the applicant within the program area.

(2) A schedule identifying the total number of units applied for by unit size (number of bedrooms), type of housing structure (elevator, non-elevator), and whether for occupancy by elderly (including handicapped and disabled) or for non-elderly (Family, larger Family).

(3) A description of the overall approach and objectives in administering the program, including a proposed organization structure listing the number and type of personnel employed or proposed to be employed.

(4) A description of program functions, including a brief statement describing the procedures to be used in carrying out each of the following functions:

(i) Outreach to Owners and Eligible Families which shall fulfill the requirements identified in §§ 882.207 and 882.208,

(ii) Implementation of Family selection policies prescribed by HUD pursuant to § 882.209, determination of Family eligibility, recertification of income, computation of Gross Family Contribution, briefing of Families and issuance of Certificates, and provision of housing information and services to Families,

(iii) Use of Housing Quality Standards and inspections and reinspections of units,

(iv) Lease approval and HAP Contract execution,

(v) Payment of housing assistance and other payments to Owners pursuant to HAP Contract and processing of requests for rent adjustments,

(vi) A formal procedure for handling complaints and appeals, and

(vii) Authorizing evictions.

(5) An explanation of proposed variations to the acceptability criteria of the Housing Quality Standards pursuant to § 882.109 of the regulations.

(6) An estimate of the proposed fee for preliminary costs and fee for regular costs of administration not to exceed the maximum fee specified in the packet.

(7) Estimates of housing assistance payments on the forms prescribed by HUD.

(8) A statement that the CA will use the HUD approved schedule of Allowances for Utilities and other Services or a statement of proposed variations with a justification of the amounts.

(9) An equal opportunity housing plan as described in § 882.204(b)(1).

(10) A certification that the CA agrees not to enter into contracts for units which are owned and/or managed directly or indirectly by the CA.

(11) A statement of capability to carry out the program by demonstrating that the applicant:

(i) Has the necessary organization, experience, and management and technical skills, or the ability to obtain them,

(ii) Has an understanding of program objectives, scope and tasks to be performed, and

(iii) Has a grasp of potential difficulties which might be encountered in achieving the program objectives.

(12) A proposed leasing schedule specifying the number of units that are expected to be leased by the end of each three-month period. In projects of 100 units or more, this schedule shall provide that all units must be leased by eligible Families within 12 months. In the case of smaller programs, a shorter time period may be established by HUD.

§ 882.312 Selection of Contract Administrators.

(a) Section 882.205 shall not apply.

(b) Immediately after the deadline date and time for receipt of applications, the HUD Review Committee shall begin its review of all applications accepted.

(c) Each application shall be evaluated by HUD on the basis of all pertinent factors under this subpart. Applications from entities that own and/or manage units directly or indirectly which would otherwise be available for occupancy by Certificate holders will be considered only if on other acceptable applications have been received. An applicant who has been selected as a CA and who has any direct or indirect interest in the ownership and/or management of eligible units will be prohibited from entering into Housing Assistance Payments Contracts for those units. On request each applicant shall be entitled to receive a statement of the reason or reasons for rejection of its application.

(d) *Factors for Award.* In rating applications for approval, selection will be based on the factors for award listed below, in equal importance:

(1) The applicant's technical skills and experience (or ability to obtain them) necessary to administer the Section 8 Existing Housing Program under this Subpart;

(2) The applicant's understanding of program objectives and the scope of responsibilities to be performed: including:

(i) Experience in outreach to lower-income Families as well as to Owners.

(ii) Administrative experience with lower-income Families, including income and eligibility determinations, financial management, recordkeeping, promoting housing choice, grievance procedures, and problems related to discrimination,

(iii) Experience with the real estate community, including familiarity with the housing stock in relationship to Housing Quality Standards in the program area, and

(iv) Experience working with appropriate Federal, State, and local agencies,

(3) The applicant's organizational structure and proposed personnel to administer the program.

(4) The applicant's proposed fee for preliminary expenses and for the regular costs of administration.

(e) If no acceptable applications are received pursuant to § 882.311 except from entities that directly or indirectly own and/or manage units which were precluded from consideration because of the requirement of paragraph (c) or this section, such applications may be considered. Preference shall be given to the otherwise acceptable applicant whose certification pursuant to Section 882.311 (b)(1) indicates a significantly fewer number of units that would otherwise be available for occupancy by Certificate holders under the program.

§ 882.313 CA Contract and schedule of leasing.

(a) Section 882.206 shall not apply.

(b) The CA Contract shall contain a provision relating to expeditious leasing of units under the program in accordance with the approved leasing schedule. HUD may reduce the number of units and/or the amount of the CA Contract commitment if the CA fails to perform in accordance with the approved schedule.

§ 882.314 Certificates of family participation.

The provisions of § 882.209(a)(2) shall not apply. In lieu thereof, the following shall apply:

Certificates shall be issued on a first come, first served basis, except for any admission policies specifically approved by the Field Office. However, in issuing Certificates, no requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant, nor upon the length of the time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

§ 882.315 Term of lease.

The provisions of § 882.210(f)(1) shall not apply. In lieu thereof, the following shall apply:

The CA shall determine that the Lease is consistent with § 882.304(b) and (d).

§ 882.316 Adjustments of allowances for utilities and other services.

The provisions of § 882.214 shall not apply.

In lieu thereof, the following shall apply:

(a) At least annually, the CA shall determine whether there has been a substantial change in utility rates or other change of general applicability and whether an adjustment is required in the Allowances for Utilities and Other Services by reason of such changes or because of errors in the original determination. If the CA determines that an adjustment should be made, it shall propose to the Field Office a revised schedule of adjustments taking into account size and type of dwelling units and other pertinent factors. The Field Office shall review the proposed revision and approve it with any appropriate modifications, or disapprove it, and shall notify the CA.

(b) Upon receipt of the HUD approved revised schedule, the CA shall then determine the amounts of adjustments to be made in the rent to be paid by affected Families as well as the amount of housing assistance payments and shall notify the Owners and Families accordingly.

(c) If the PHA finds that utility cost changes are causing substantial difficulties in leasing Safe, Decent, and Sanitary housing within the existing Fair Market Rent limitation the PHA shall furnish appropriate documentation to HUD with a request for consideration of the need for a change in the Fair Market Rents.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d))).

Issued at Washington, D.C., January 12 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[Docket No. R-79-629]

[FR Doc. 79-10936 Filed 4-9-79; 8:45 am]

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federal register

Tuesday
April 10, 1979

Part VI

Securities and Exchange Commission

Simplified Registration and Reporting Requirements for Small Issuers

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202, 230, 231, 239, 249

Simplified Registration and Reporting Requirements for Small Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to forms, schedules, guides and rules.

SUMMARY: The Commission announces the adoption as an experiment of a simplified form, available to certain domestic or Canadian corporate issuers, provided such issuers are not subject to the Commission's continuous reporting requirements, for the registration of securities to be sold to the public for cash not exceeding an aggregate offering price of $5 million. The form calls for narrative disclosure somewhat less extensive than Form S–1 and audited financial statements substantially similar in content to those required by Regulation A. Amendments to Commission organizational and procedural rules provide for optional Regional Office filing and processing of this form. In addition, the Commission is adopting amendments which allow issuers utilizing the form to include narrative and financial information substantially similar to that called for by the form in their initial annual report filed with the Commission.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Paul A. Belvin or Douglas S. Perry (202/755–1750), Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announces the adoption of Form S–18 and publishes an amendment to Guide 23, Current Financial Statements and Related Data, of the Guides for Preparation and Filing of Registration Statements, under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)) and the adoption of amendments to General Instructions and Instructions As to Financial Statements of Form 10–K (17 CFR 249.310) under the Securities Exchange Act of 1934 (the "Excahnge Act") (15 U.S.C. 77a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)). Form 10–K is used for annual reports to the Commission pursuant to section 13 or 15(d) of the Exchange Act where no other form is prescribed. In order to provide for the processing of Form S–18 registration statements in the Commission's Regional Offices or at the headquarters office in Washington, D.C. at the option of the registrant, the Commission also has amended two of its general organization rules, one of its procedural rules, and two rules under the Securities Act.

Form S–18 calls for narrative disclosure somewhat less extensive than Form S–1; however, the items which are included in Form S–18 are generally consistent with correpsonding items in Form S–1. Form S–18 will also allow issuers to file, as part of the registration statement, audited financial statements for two fiscal years instead of the three fiscal required in Form S–1. Furthermore, issuers may prepare Form S–18 financial statements in accordance with generally accepted accounting principles and practices ("GAAP") rather than Regulation S–X (17 CFR 210.1–01 to 210.12–43). In addition, the amendment to Form 10–K also allows certain issuers who have had a public offering registered on Form S–18 to furnish narrative and financial information substantially in accordance with that provided in their offering on Form S–18 in their Form 10–K report for the fiscal year in which the registration statement on Form S–18 was declared effective.

The simplified registration and reporting requirements adopted herein are in the nature of an experiment. The Commission will monitor closely the use of Form S–18 for an apporpriate period to determine whether the form has functioned as an effective means for small issuers to raise limited amounts of capital through a registered public offering consistent with the protection of investors. After such period the Commission will decide whether the form should be retained and, if so, whether the conditions for its availability should be revised.

Background

The study of the problems confronting small businesses, while a topic of longstanding interest, has recently become the focus of considerable public attention. The wealth of concern for the well-being of that sector stems from the pivotal role it plays in the vitality of the general economy. The contribution of small businesses in supplying jobs, technical innovation, and generally in keeping our system competitive requires that unnecessary obstacles to their formation and growth be removed.

In Securities Act Release No. 5914 (March 6, 1978) (43 FR 10876) the Commission announced its intent to hold public hearings regarding the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the Securities Acts. The hearings were prompted in part by the Commission's concern that small businesses appear to be increasingly unable to raise funds in the public capital markets. Also, the Report of the Advisory Committee on Corporate Disclosure cited a number of factors which suggest that a reduction in reporting under the Securities Acts for small businesses might be warranted. The Advisory Committee recognized that further study was necessary and recommended that the Commission hold public hearings.[1]

A total of 21 days of hearings was held in Washington, Los Angeles, Denver, Atlanta, Chicago, and Boston. A diversified group of 170 witnesses appeared at the hearings, resulting in a hearing record of approximately 4,500 pages. In addition, the Commission received 55 written comments. A summary of the record of the proceeding is available for public inspection at the Commission's Public Reference Section,[2] 1100 L Street, NW., Washington, D.C. 20549, (202) 523–5360.

As stated by the Commission in originally announcing the public hearings, it recognizes that the small business problem is exceedingly complex. In fact, commentators at the hearings stressed that a number of factors unrelated to the Federal securities laws, such as tax policy, a depressed securities market, and the state securities laws, are the significant factors affecting the ability of small businesses to raise capital. Notwithstanding the Commission's agreement that many factors have a more significant impact on small business capital formation than the Federal securities laws, the Commission is engaged in an ongoing effort to assist small business and, consequently, has undertaken a number of rule amendments and proposals which are responsive to concerns expressed at the small business hearings. In Securities Act Release No. 5977 (September 11, 1978) (43 FR 41383), the Commission adopted an amendment to Regulation A (17 CFR 230.251–.264) to increase the aggregate offering price of securities which may be sold thereunder during a

[1] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95–29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) at 511.

[2] File No. S7–734.

twelve month period from $500,000 to $1,500,000. This amendment followed Congressional action raising the aggregate amount of the small offering exemption specified in section 3(b).[3] The Commission, in Securities Act Release No. 5997 (November 16, 1978) (43 FR 55254), proposed an amendment to Regulation A to permit the use of a preliminary offering circular prior to the commencement of certian firm-commitment underwritten offerings thereunder. In Securities Act Release No. 5975 (September 8, 1978) (43 FR 41193), the Commission adopted an amendment to Rule 146 (17 CFR 230.146), the private-placement exemptive rule, which modifies the disclosure requirements when an offering does not exceed $1,500,000 to allow disclosure of information prescribed by Schedule I of Regulation A. The Commission also amended Rule 144 (17 CFR 230.144), the rule which sets forth guidelines for the resale of certain securities, and proposed amendments to that rule. Securities Act Release No. 5979 (September 19, 1978) (43 FR 43709) amends Rule 144 to (1) relax the limitations on the amount of securities that can be sold under the rule; (2) permit sales under the rule directly to market makers; and (3) eliminate the brokerage or market maker transaction requirement with respect to sales of securities by estates and beneficiaries thereof who are not affiliates of the issuer of the securities.[4] Securities Act Release No. 6032 (March 5, 1979) (44 FR 15610) further amended Rule 144 to permit non-affiliates, who have been non-affiliates for a period of at least three months, to disregard the volume limitation provisions of Rule 144 after a period of (1) three years, if the securities to be sold are those of a class which is either listed on an exchange or quoted on NASDAQ, or (2) four years, if the securities to be sold are those of an issuer which files periodic reports under section 13 or 15(d) of the Exchange Act in accordance with paragraph (c)(1) of Rule 144.[5] In addition to the actions already taken, the Commission is engaged in an ongoing review of additional amendments and new rules intended to facilitate capital formation by small businesses consistent with the protection of investors. The Commission also is attempting to formulate periodic reporting requirements for small businesses which are more effective and less burdensome.

In a companion release to the announcement of the small business hearings, the Commission proposed Form S–18 and corresponding amendments to the Form 10–K financial statements and authorized the publication of a proposed amendment to Guide 23.[6] Under those proposals, a corporation which is not subject to the Commission's continuous reporting requirements and is not an investment company, a mining company for which Form S–3 (17 CFR 239.13) is available, or a company offering limited partnership interests in oil or gas properties, might make a registered public offering on Form S–18 of up to $3 million utilizing two year audited financial statements prepared in accordance with GAAP. In addition, since section 15(d) under the Exchange Act would require a Form 10–K report containing audited financial statements prepared in accordance with Regulation S–X as of the end of the fiscal year during which the Securities Act registration became effective, the proposals provide limited relief by allowing the inclusion in that initial annual report of two year audited financials prepared in accordance with GAAP. Thereafter, if the issuer remains subject to section 15(d), or becomes subject to section 12, it would be required to file periodic reports under the Exchange Act subject to the general requirements applicable to all reporting companies.

The rationale behind these proposals and the amendments adopted today is that an issuer not subject to the reporting requirements of the Commission at the time the registration statement is filed under the Securities Act may, consistent with the protection of investors, raise a limited amount of capital without immediately incurring the full range of disclosure and reporting requirements imposed upon other issuers. These procedures are intended to facilitate the process by which a small business, over a period of time, might raise a limited amount of capital publicly and then come into full compliance with the periodic reporting requirements imposed upon other issuers, thereby gaining a broader access to the capital markets without being impeded by the immediate burdens confronting many small, non-reporting issuers.[7]

The Commission received substantial comment at its public hearings and by written comment which strongly endorsed Form S–18 and its related proposals as an appropriate procedure for reducing the burdens of registration and reporting for small businesses. Based upon this comment and upon its own experience, the Commission has determined to adopt Form S–18 and the proposed amendments to Form 10–K and to publish the amendment to Guide 23 substantially as proposed. In addition, the Commission, responding to comments received at the hearings, has determined to provide for the filing and processing of Form S–18 registration statements in the appropriate Regional Office of the Commission or in Washington, D.C. at the election of the registrant. A discussion of the amendments adopted, including changes from the original proposals, and the significant public comment received is set forth below.

Synopsis

The following brief synopsis is intended to assist interested parties in their understanding of the amendments adopted. Attention is directed to the attached text for a more complete understanding.

Form S–18

A. *Availability.* Form S–18, as proposed, would have been available to any domestic or Canadian corporate issuer which is not subject to the reporting provisions of the Exchange Act and is not a company offering limited partnership interests in an oil and gas program or fractional undivided interests in oil or gas properties, an investment company, or a mining comany for which Form S–3 is available, for the registration of securities which are to be sold to the public for an aggregate offering price not exceeding $3 million.

Numerous commentators recommended that Form S–18 be made availble to all issuers, including non-corporate entities. It was suggested that Form S–18 should give all issuers the

[3] Pub. L. No. 95–283 (May 21, 1978). Pub. L. No. 95–425 (October 6, 1978) further raised the ceiling under section 3(b) to $2,000,000. Consideration of any further increase in Regulation A is being deferred for a period of experience at the $1,500,000 ceiling.

[4] In Securities Act Release No. 5995 (November 8, 1978) (43 FR 54229), Rule 144, Form 144 (17 CFR 239.144) and Form S–8 (17 CFR 239.16b) were amended further to reflect the amendments to Rule 144 adopted on September 19, 1978.

[5] Paragraph (c)(1) states that the issuer must have been subject to the reporting requirements of the 1934 Act for at least 90 days and must have filed all reports required to have been filed within the past 12 months, or such shorter period that the issuer was subject to the reporting requirements.

[6] Securities Act Release No. 5915 (March 6, 1978) (43 FR 10888).

[7] It should be noted that issuers completing an offering pursuant to Form S–18 will become subject to Section 15(d) and may become subject to the requirements of Section 12(g) under the Exchange Act. Registration under the Exchange Act triggers, among other things, the obligation to file periodic reports under section 13 of that Act. It should be noted that the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95–213 (December 19, 1977)) amended the Exchange Act to require reporting companies to make and keep detailed books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the registrant.

opportunity and encouragement to elect registration. At this time, however, the Commission has determined to retain the restrictions on availability substantially as proposed. Form S–18 was designed to facilitate the entry of small businesses into the public capital markets. As indicated in Securities Act Release No. 5915, Form S–18 is in the nature of an experiment which represents a departure from traditional disclosure concepts. Consequently, the Commission believes it should be monitored for an appropriate period. In the future, the Commission will review the use of the Form to determine whether its availability should be broadened. Consistent with this decision, General Instruction A(a) retains its proposed restrictions on availability but has been amended in the following respects to clarify its intent: (1) Paragraph A(a)(3) specifically excludes the sale on Form S–18 of any form of limited partnership interests; (2) paragraph A(a)(5) specifically excludes from the use of the Form any corporation which has or intends to have significant oil and gas related operations; (3) paragraph A(a)(6) specifically excludes from the use of the Form any corporations which has or intends to have significant operations; (4) paragraph A(a)(7) specifically excludes from the use of the Form any insurance company which is exempt from the reporting requirements of the Exchange Act in reliance upon Section 12(g)(2)(G) thereof; and (5) paragrph A(a)(8) excludes from the use of the Form any majority-owned subsidiary of an issuer which does not meet the qualifications for use of the Form.

B. *Offering Limit.* The majority of commentators at the small business hearings stated that the proposed $3 million offering limit on Form S–18 would not be sufficiently high to make the use of the Form economically attractive to issuers and underwriters. Consequently, General Instruction A(a) has been amended to provide for an offering limit of $5 million. The Commission may amend the offering ceiling in the future as it deems appropriate.

In order to prevent a circumvention of the $5 million ceiling for an offering on Form S–18, the Rule as to the Use of the Form also provides that the aggregate offering price of certain other securities of the issuer shall be included in computing the ceiling. These include any securities of the issuer which have been sold within twelve months prior to the commencement of a Form S–18 offering and which were sold either: (1) In violation of section 5(a) of the Securities Act or (2) pursuant to a registration statement previously filed on Form S–18. In a manner similar to Rule 254 (17 CFR 230.254) under Regulation A, the proposed Rule as to Use of Form S–18 also defines the term "securities of the issuer" to include securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

In certain instances, an issuer might not desire to utilize Form S–18 to raise the maximum $5 million allowed by the Form. In order to make available the benefits of the Form to those issuers, paragraph A(d) of the Rule as to Use of Form S–18 provides that registrants who have had a prior offering on Form S–18 may use the Form during the same fiscal year in which the prior offering was made to raise the remaining balance of the offering limit.[8] In addition, a registrant as to whom the duty to file under Section 15(d) of the 1934 Act is suspended may then reuse Form S–18 subject to the offering limit calculations specified in General Instruction A(c).[9] The issuer, of course, must meet the remaining criteria of the Rule As to Use at the time of the subsequent registration.

C. *Secondary Sales.* As proposed, Form S–18 would have been available only for sales by the issuer and could not be used for secondary sales by selling shareholders. The Commission specifically requested comment as to whether, in view of the primary purpose of the Form to facilitate the formulation of capital by small business, secondary offerings should be permitted under the Form. Commentators at the hearings generally favored the use of Form S–18 for resales, noting that such use of the Form would increase the investment liquidity for insiders, affiliates, and public stockholders, and thereby release funds for reinvestment in new small businesses. Also, it was stated that underwriters often demand that more shares be sold than the issuer can justify, and that, in such situations, the unavailability of Form S–18 for resales might preclude its use.

The Commission agrees that the availability of Form S–18 for secondary sales in certain situations is desirable. Accordingly, General Instructions A (a) and (b) now provide that resales of securities on Form S–18 may be made for up to $1.5 million. The amount offered by selling shareholders is to be included in the overall $5 million offering ceiling of Form S–18. Pursuant to General Instruction A(d), secondary sales pursuant to Form S–18 may be made either in conjunction with an offering by the issuer or as a separate offering.

D. *Narrative Disclosure.* The narrative disclosure called for by Form S–18 contains fewer disclosure items than required by Form S–1. The items which are included in Form S–18, however, are generally consistent with corresponding items in Form S–1. Except as noted below, the adopted disclosure items generally are as proposed in Securities Act Release No. 5915.

1. *Description of Business.* The suggestion was made in the comment letters that Form S–18 should reference Item 1, Description of Business, of Regulation S–K (17 CFR 220.20). The Regulation S–K item, however, was not designed specifically to elicit disclosure about the business of small issuers. Item 6 of Form S–18 has therefore been amended in a manner consistent with the approach recommended by the Advisory Committee on Corporate Disclosure [10] and is intended to require only the information which would normally be applicable to those small businesses expected to utilize the Form. The Commission believes that the new item will be less burdensome and provide more flexibility to the issuer than the item originally proposed.

2. *Remuneration of Directors and Officers.* Commentators criticized the $20,000 remuneration floor of proposed Item 9 as too low. In view of the potential inconsistency with the issuer's initial Form 10–K and the fact that aggregate remuneration information will be provided, the floor in new Item 10, Remuneration of Directors and Officers, is $50,000, consistent with the recently adopted Form S–K item.

In order to avoid complex regulations which bear little relevance to the small businesses expected to use Form S–18, the Commission has decided not to adopt commentator suggestions to directly reference the remuneration item

[8] For example, a calendar-year issuer who had no sales of securities in the 12 months preceding a Form S–18 offering on May 1, as computed in paragraph A(c) of the Rules as to Use, and whose May offering constituted only 50 percent of the offering ceiling could use Form S–18 to raise the remaining 50 percent of the ceiling up until December 31 of the same year.

[9] General Instruction A(c) requires that the value of all securities sold pursuant to a registration statement on Form S–18 during the twelve months preceding the date of filing be included for purposes of computing the $5 million offering ceiling. Therefore, assuming the facts stated in footnote 8, and that the issuer's reporting obligations pursuant to Section 15(d) are suspended as of January 1 of the succeeding year, the issuer could reuse Form S–18 to raise $5 million after May 1 of the succeeding year or could reuse Form S–18 to raise the remaining 50% of the offering ceiling prior to May 1 of the succeeding year.

[10] Report of the Advisory Committee on Corporate Disclosure at 470–496.

to Item 4 of Regulation S–K. New Item 10 is intended to elicit the remuneration information pertinent to the operations of a small business, while avoiding many of the more specific instructions and notes which are necessary in Regulation S–K to cover the spectrum of situations presented by larger companies.

3. *Projections.* The importance of projections and other forward looking information in the sale of small business securities was stressed at the hearings. Although the Commission's proposed safe harbor rule for projections does not extend to non-reporting companies,[11] it is anticipated that issuers utilizing Form S–18 in many cases will want to include projections in the registration statement. Consequently, general instruction E(c) has been amended to refer to Guide 62, Projections of Future Economic Performance.[12]

4. *Capital Structure.* It was noted at the hearings that the omission of a capital structure item would not result in any significant savings to issuers but might deprive investors of potentially important pro forma information. In order to ensure that such information is included when appropriate, new Item 5, Capital Structure, calls for capitalization information if the offering would result in a material change in the registrant's capital structure.

5. *Options to Purchase Securities.* Former Item 10 would have required the issuer to name each person who holds an option, warrant, or right to purchase securities of the issuer. This requirement was described by commentators as too broad and unduly burdensome in light of the limited benefit to be derived by listing option holders who are not affiliates, directors, or highly compensated officers of the issuer, or other persons having some material relationship to the issuer. Consequently, Item 11 has been amended to call for options disclosure only with respect to officers, directors, affiliates, and promoters.

6. *Interest of Management and Others in Certain Transactions.* The floor for disclosure of the interests of management and others in certain transactions was criticized by commentators as too low. It was noted that the reduction of the materiality standard for "certain transactions" from the $40,000 level in Form S–1 to a $20,000 level in Form S–18 neither seems mandated by the Form S–18 dollar ceiling nor advisable as an exception from the well established norms in other filings. The Commission concurs with these comments and has made two changes in new Item 13. First, the materiality standard for disclosure of the "certain transactions" has been raised to $40,000. Second, in order to maintain the stated purpose of consistency with Regulation A, current Item 13 has been amended to cover the registrant's last two fiscal years.

E. *Financial Statements.* Form S–18 required audited financial statements substantially in accordance with those required by Regulation A.[13] Specifically, Form S–18 requires: (1) A consolidated balance sheet as of a date within 90 days prior to the date of filing the registration statement; and (2) consolidated statements of income, source and application of funds, and other stockholders' equity for the two fiscal years prior to the date of filing, prepared in accordance with GAAP.[14] Also, in order to ensure adequate financial statement disclosure in situations where an issuer has or is about to by purchase or pooling of interest succeed to one or more businesses which, in the aggregate, are significant, Item 15 has been amended to require appropriate statements.

A registrant may, therefore, include substantially more simplified financial statements in Form S–18 than would otherwise be required in Form S–1. The Commission believes that the elimination of expenses through the simplification of the financial statements and schedules will result in costs savings to registrants and, at the same time, provide adequate information to investors with respect to offerings of $5 million or less. The Commission specifically requested comments, and received an affirmative response, concerning the adequacy of this reduced financial disclosure by small business and its ability to facilitate the raising of capital in a manner consistent with the protection of investors.

F. *Place of Filing on Form S–18.* In Securities Act Release No. 5915 the Commission invited comments on the benefits of giving registrants the option of filing registration statements either at the Commission's principal office in Washington or at a specified Regional Office. Such potential for regional filing was seen by commentators as one of the primary benefits of Form S–18. Accordingly, the Commission has determined to allow registrants utilizing Form S–18 to file in Washington or to file in the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. An issuer having or proposing to have its principal business operations in Canada shall have the option of filing Form S–18 in Washington or in the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the issuer shall have the option of filing in Washington or with the Regional Office for the region in which such underwriter has its principal office.

Implementation of optional regional processing of Form S–18 filings will require a brief training program encompassing the Commission's nine Regional Offices. Due to logistical considerations, the nine Regional Offices will be split into two training sessions. Filing in the respective Regional Offices will be permitted upon completion of that particular office's training. Initiation of regional filing of Form S–18 in the Regional Offices in Atlanta, Boston, Chicago, Denver and Los Angeles, is tentatively scheduled for June 15, 1979, and in the Regional Offices in Fort Worth, New York, Seattle and Washington, for September 15, 1979. The Commission will issue Releases announcing when particular Regional Offices are available for Form S–18 filings. Until the time of filing availability in the particular Regional Office for which a registrant will have the option of filing Form S–18 registration statements, all such registration statements shall be filed at the Commission's principal office in Washington.

Implementation of regional processing of Form S–18 filings requires amendment of several of the Commission's organizational and procedural rules. Specifically, Rule 27 (17 CFR 200.27) and Rule 30–6 (17 CFR 200.30–6) of the Commission's Organization Rules have been amended to give the Regional Administrators authority to process and declare effective registration statements on Form S–18 and amendments thereto pursuant to delegated authority. The Commission's procedural rule regarding the processing of filings (17 CFR 202.3) has been amended to reflect the fact that the Regional Offices will be processing Form S–18 filings. Two rules under the Securities Act of 1933, Rule 455 (17 CFR 230.455) regarding the place of filing of registration statements and

[11] Securities Act Release No. 5993 (November 7, 1978) (43 FR 53251).

[12] Securities Act Release No. 5992 (November 7, 1978) (43 FR 53246).

[13] Regulation A financial statements are required to be prepared in accordance with GAAP.

[14] Item 15 does provide that the report of the independent accountant shall comply with the requirements of Article II of Regulation S–X.

Rule 463 (17 CFR 230.463) regarding the preparation and filing of Form SR, have also been amended to provide for optional Regional Office filing of Form S–18 and corresponding Form SR's.

Amendment to Guide 23

Guide 23 of the Guides For the Preparation and Filing of Registration Statements Under the Securities Act of 1933 represents policies and practices developed by the Division of Corporation Finance with respect to the need for updating financial statements and related data in registration statements. The amendment to Guide 23 provides that, in the event that there is a delay between the date of filing the registration statement on Form S–18 and its effectiveness, registrants with an established record of earnings and in a sound financial condition may be required to furnish later sales and net income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include data over four and one-half months old. This information will follow the statement of income in the prospectus.

Registrants with no established record of earnings and registrants currently showing losses or a weak financial condition will be required to furnish the above data or may be required to bring the financial statements up to the latest practicable date not more than 90 days prior to filing the amendment upon which it is expected the filing will become effective. In addition, if delay carries the effective date beyond the close of the fiscal year and, by applying due diligence, the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for that fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

The amendment also provides that in those situations where numerous or involved financial transactions have been effected since the date of the financial statements furnished, or where it is recognized that unsual conditions affect the determination of earnings, the Division of Corporation Finance has indicated that later interim financial statements may be requested on an audited basis as a condition to acceleration under section 8(a) of the Act.

Amendment to Form 10–K

In order to further reduce the expenses resulting from registration under the Securities Act, the Commission will allow registrants filing on Form S–18, and thereby becoming subject to the reporting provisions of section 15(d) of the Exchange Act, to include audited Regulation A type financial statements covering two fiscal years in their initial annual report to the Commission on Form 10–K. The amendment to Instructions as to Financial Statements on Form 10–K provides that the issuer may include, in lieu of those financial statements otherwise required, the following information: (1) A consolidated balance sheet as of the end of the last fiscal year and (2) statements of income, source and application of funds and other stockholders' equity for each of the last two fiscal years prepared in accordance with GAAP.[15] Registrants, therefore, will be able to include in their initial annual report on Form 10–K financial statements prepared on the same basis as those provided in their registration on Form S–18.

A Form 10–K filed for the fiscal year immediately following the fiscal year during which a registrant has had a registration statement on Form S–18 become effective may include financial statements prepared as follows: Financial statements for the most recent fiscal year shall be prepared in accordance with Regulation S–X; and Financial statements for the prior year, previously disclosed in the registration statement on Form S–18 in accordance with generally accepted accounting principles and practices, do not need to include the compliance items and schedules of Regulation S–X, but should be recast to show the same line items as are set forth for the most recent fiscal year.

In addition, the Commission has determined to allow Form S–18 registrants to include narrative disclosure in their initial Form 10–K which is consistent with that called for by Form S–18. Accordingly, new General Instruction J to Form 10–K provides that issuers filing their initial Form 10–K pursuant to an offering on Form S–18 may include an update of the information provided in response to Form S–18 Item 6, Description of Business; Item 10, Remuneration of Directors and Officers; and, Item 13, Interest of Management and Others in Certain Transactions, in lieu of the information called for by Form 10–K Item 1, Business, and Item 15, Management Remuneration and Transactions. In addition, Form 10–K General Instruction J provides that Item 2, Summary of Operations, may be omitted by such issuer.

[15] Instruction 9 of Instructions As to Financial Statements of Form 10–K does provide that the report of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X.

Amendments

Accordingly, 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. Section 200.27 is amended by revising the second sentence to read as follows:

§ 200.27 The Regional Administrators.

* * * The Regional Administrator's responsibilities include particularly the investigation of transactions in securities on national securities exchanges, in the over-the-counter market, and in distribution to the public; the examination of members of national securities exchanges and registered brokers and dealers, investment advisers and investment companies including the examination of reports filed under § 240.17a–5 of this chapter; the examination and processing of filings under §§ 230.251 to 230.264 of this chapter issued pursuant to section 3(b) of the Securities Act of 1933; the examination and processing of filings under § 239.28 of this chapter and any related filings under the Trust Indenture Act of 1939; the prosecution of injunctive actions in U.S. District Courts and administrative proceedings before Administrative Law Judges; the rendering of assistance to U.S. Attorneys in criminal cases; and the making of the Commission's facilities more readily available to the public in that region. * * *

* * * * *

2. Section 200.30–6 is amended by inserting a new paragraph (a) and redesignating present paragraphs (a), (b), (c), (d) and (e) as paragraphs (b), (c), (d), (e) and (f) as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(a) With respect to registration of securities on Form S–18 (§ 239.28 of this chapter) pursuant to the Securities Act of 1933 (15 U.S.C. 77a et seq.), and Regulation C thereunder (§ 230.400 et seq. of this chapter):

(1) To determine the effective dates of amendments filed pursuant to Section 8(c) of the Act (15 U.S.C. 77h(c)).

(2) To consent to the withdrawal of registration statements or amendments or exhibits thereto, pursuant to Rule 477 (§ 230.477 of this chapter), and to issue orders declaring registration statements

abandoned, pursuant to Rule 479 (§ 230.479 of this chapter).

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 485 (§ 230.485 of this chapter) under the Act.

(4) To take the following action pursuant to section 8(a) of the Act (15 U.S.C. 77j(a)):

(i) To determine registration statements to be effective within shorter periods of time than 20 days after the filing thereof;

(ii) To consent to the filing of amendments prior to the effective dates of registration statements as part thereof, or to determine that amendments filed prior to the effective dates of registration statements have been filed pursuant to orders of the Commission, so as to be treated as parts of the registration statements for the purpose of Section 8(a) of the Act (15 U.S.C. 77h(a));

(iii) To determine to be effective applications for qualifications of trust indentures filed with registration statements.

(b) (No change from former paragraph (a) under § 200.30–6)

(c) (No change from former paragraph (b) under § 200.30–6)

(d) (No change from former paragraph (c) under § 200.30–6)

(e) (No change from former paragraph (d) under § 200.30–6)

(f) (No change from former paragraph (e) under § 200.30–6)

PART 202—INFORMAL AND OTHER PROCEDURES

Section 202.3 is amended by adding the following sentence to paragraph (a):

§ 202.3 Processing of filings.

(a) * * * A similar procedure is also followed in the Commission's Regional Offices with respect to registration statements on Form S–18 (17 CFR 239.28) and related filings under the Trust Indenture Act of 1939.

* * * * *

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

1. Section 230.455 is revised to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for registration statements on Form S–18 (§ 239.28 of this chapter) and except as otherwise provided in § 230.415. Registration statements on Form S–18 may be filed with the Commission either at its principal office or at the Commission's regional offices as specified in General Instruction B to Form S-18. Such material may be filed by delivery to the Commission through the mails or otherwise.

* * * * *

2. Section 230.463 is amended by adding the following sentence to paragraph (a):

§ 230.463 Report of sales of securities and use of proceeds therefrom.

(a) * * * Form SR reports shall be filed at the same office of the Commission where the registration statement to which it relates was filed.

* * * * *

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

Part 231 is amended by revising paragraph (a)(5) of Guide 23 of Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933 as follows:

23. Current Financial Statements and Related Data.

* * * * *

(a)(1)–(4). [No changes].

(5) Form S–18. In the event that there is a delay between the date of filing the registration statement and its effectiveness, registrants with an established record of earnings and in a sound financial condition should be prepared to funish, in a paragraph following the Statement of Income, sales and net income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include financial statements over four and one-half months old.

Registrants with no established record of earnings and registrants currently showing losses of a weak financial condition should not only furnish the above sales and net income information but be prepared to bring the financial statements up to the latest practicable date not more than 90 days prior to filing the amendment upon which it is expected the filing will become effective. If delay carries the date beyond the close of the fiscal year and by applying due diligence the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for the fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

When later interim financial statements are to be furnished to supplement either fiscal year or interim statements which have been audited, the later statements would in the usual case be unaudited. However, when numerous or involved financial transactions have been effected since the date of the financial statments furnished or it is recognized that unusual conditions affect the determination of earnings, the Division of Corporation Finance has indicated that later financial statements may be requested on an audited basis as a condition to acceleration under Section 8(a) of the Act.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Part 239, Subpart A, is amended by adding § 239.28 as follows:

§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

Securities and Exchange Commission

Washington, D.C. 20549

Form S–18

Registration Statement

Under the Securities Act of 1933

_____

(Exact name of registrant as specified in charter)

_____

(Address of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name and address of agent for services)

_____

(State or other jurisdiction of incorporation)

_____

(Standard industrial classification code number)

_____

(IRS employer I.D. number)

Approximate date of commencement of proposed sale to the public————————.

Calculation of Registration Fee

Title of shares being registered—(Rule 406)————————.

Amount being registered—(Rule 405(b))————————.

Proposed maximum offering price per unit—(Rule 457)————————.

Proposed maximum aggregate offering price————————.

Amount of registration fee—(Rule 457)————————.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.*

* Inclusion of this paragraph is optional. See Rule 473. (Each page of this document, including exhibits

Footnotes continued on next page

Facing sheet.
General instructions.
A. Rule as to Use of Form S–18.
B. Application of General Rules and Regulations.
C. Documents Comprising Registration Statement.
D. Form and Content of Prospectus.
E. Preparation of Part II.
Part I. Information required in prospectus.
Item.
1. Distribution Spread.
2. Plan of Distribution.
3. Use of Proceeds to Registrant.
4. Organization Within 5 Years.
5. Capital Structure.
6. Description of Business.
7. Description of Property.
8. Pending Legal Proceedings.
9. Directors and Officers.
10. Remuneration of Directors and Officers.
11. Options to Purchase Securities.
12. Principal Security Holders.
13. Interest of Management and Others in Certain Transactions.
14. Securities Being Registered.
15. Financial Statements.
Part II. Information not required in prospectus.
16. Marketing Arrangements.
17. Other Expenses of Registration and Distribution.
18. Relationship with Registrant of Experts Named in Registration Statement.
19. Recent Sales of Unregistered Securities.
20. Exhibits.
Undertakings.
Signatures.
Instructions as to exhibits.

General Instruction

A. *Rule as to Use of Form S–18.*

(a) This form is to be used for the registration of securities of any corporation not to exceed an aggregate offering price of $5 million which are to be sold for cash by the issuer or for the account of security holders in accordance with paragraph A(b), provided such corporation:

(1) Is incorporated under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic corporation, or Canada or the United States if a Canadian corporation;

(2) Is not subject to the reporting provisions of the Securities Exchange Act of 1934 pursuant to Section 12 or 15(d) of that Act;

(3) Is not offering limited partnership interests;

(4) Is not an investment company;

(5) Does not engage or intend to engage in oil and gas related operations which exceed the criteria for exemption specified in § 210.3–18(k) of Regulation S–X;

(6) Does not engage or intend to engage in significant mining operations;

Instruction: For purposes of this form, the criteria for exemption specified in § 210.3–18(k) of Regulation S–X for oil and gas operations shall be considered by analogy as an appropriate test for determining the significance of mining operations.

(7) Is not an insurance company which is exempt from the provisions of Section 12 of the Securities Exchange Act of 1934 in reliance upon Section 12(g)(2)(G) thereof; and

(8) Is not a majority owned subsidiary of an issuer which does not meet the qualifications for use of the form, as specified herein.

(b) This form may be used for the registration of securities to be sold for the account of any person other than the issuer, provided the aggregated offering price with respect to such securities registered on Form S–18 does not exceed $1.5 million.

(c) For purposes of computing the $5 million ceiling specified above, there shall be included in the aggregate offering price of the securities registered herein, the aggregate offering price of all securities of the issuer sold within one year prior to the commencement of the proposed offering: (i) In violation of Section 5(a) of the Act; or (ii) pursuant to a registration statement filed on Form S–18. For purposes of this rule, the term "securities of the issuer" shall include securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

(d) Notwithstanding the provisions of paragraph (a)(2), a registrant which has had a prior offering on Form S–18 may, during the remainder of the fiscal year in which the prior registration was made effective, use the form to register additional securities until the offering limit as computed in paragraph (c) has been met.

B. *Place of Filing.*

All registration statements on Form S–18 and related papers filed with the Commission shall be filed at its principal office in Washington, D.C. Such material may be filed by delivery to the Commission through the mails or otherwise.

Notes.—(1) At the completion of Commission training programs for its Regional Office personnel, registrants will have the option of filing Form S–18 either in Washington or in the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. Initiation of regional filing of Form S–18 in the Regional Offices in Atlanta, Boston, Chicago, Denver, and Los Angeles, is tentatively scheduled for June 15, 1979, and in the Regional Offices in Fort Worth, New York, Seattle, and Washington, for September 15, 1979. Questions concerning the appropriate place of filing may be directed to the Commission's Regional Offices.

(2) The Commission will endeavor to process Form S–18 registration statements at the place of filing. However, due to workload or other special considerations, the Commission may refer processing to a different Commission office.

C. *Application of General Rules and Regulations.*

(a) Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C. That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

(b) Specific attention is directed to Form SR which is required to be filed by first-time registrants under the Securities Act showing sales of registered securities and the use of proceeds therefrom. Form SR shall be filed at the same office where the registration statement was filed.

(c) Attention is directed to Securities Act Release No. 4968 (April 24, 1969) [34 FR 7235] regarding the Commission's policy with respect to the prior delivery of preliminary prospectuses by registrants not subject to the reporting requirements of the Exchange Act. See the Appendix to this form.

D. *Documents Comprising Registration Statement.*

The registration statement shall consist of the facing sheet of the form, the prospectus containing the information specified in Part I, the information called for by Part II, the required signatures, consents of experts, and exhibits, and any other information or documents which are required or which the registrant may file as a part of the registration statement.

E. *Form and Content of Prospectus.*

(a) The prospectus shall contain the information called for by all of the items of Part I of the form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted. Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be repeated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to information contained elsewhere in the prospectus, this may be done by an appropriate cross reference.

(b) Where appropriate to a clear understanding by investors of the speculative or promotional nature of the enterprise, an introductory statement shall be made in the prospectus summarizing the factors which make the offering a speculation and setting forth such matters as a comparison, in percentages, of the securities being offered to the public for cash and those issued or to be issued to promoters, directors, officers, controlling persons and underwriters for cash, property and services.

(c) Attention is directed to the Division of Corporation Finance's Guides For Preparation and Filing of Registration Statements Under the Securities Act of 1933 (17 CFR 231.4936, as amended). The Guides represent Division practices with respect to the disclosure to be provided in registration statements. Registrants filing on this Form, however, need not include the charts and graphs called for by Guide 6.

Special attention is directed to Guide 62, Disclosure of Projections of Future Economic Performance.

F. *Preparation of Part II.*

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items

Footnotes continued from last page
and attachments, shall be numbered sequentially from this page, as page 1, through the last page of the document.)

or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

PART I

Information Required in Prospectus

Item 1. Distribution Spread

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities being registered (estimate, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to registrant or other persons
Per unit			
Total			

Instructions. 1. The term "commissions" has the meaning given in paragraph (17) of Schedule A of the Act. Only commissions paid by the registrant in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference theeto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.

Item 2. Plan of Distribution

(a) If the securities being registered are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the registrant and state the nature of the relationship. State Briefly the nature of the underwriters' obligation to take the securities.

Instruction. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities including "market outs," need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

Instruction. If any dealers are to act in the capacity of subunderwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be so paid.

(c) Outline briefly the plan of distribution of any securities being registered which are to be offered otherwise than through underwriters.

(d) Identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Instruction. The response to this item shall be contained in a pre-effective amendment which will be circulated if the information is not available when the registration statement is filed.

Item 3. Use of Proceeds to Registrant

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. Details of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the registrant as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds. If any material part of the proceeds is to be used to discharge a loan, the item is to be answered as to the use of the proceeds of the loan if the loan was made within one year; otherwise, it will suffice to state that the proceeds are to be used to discharge the indebtedness created by the loan.

4. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe the assets and give the names of the persons from whom they are to be acquired. State the cost of the assets to the registrant and the principle followed in determining such cost.

Item 4. Organization Within 5 Years

If the registrant was organized within the past 5 years, furnish the following information:

(a) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the registrant, and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant. The term "promoter" is defined in Rule 405 under the Act.

(b) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, state the cost thereof to the promoter.

(c) List all parents of the registrant showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction. Include the registrant and show the percentage of its voting securities owned or other basis of control by its immediate parent.

Item 5. Capital Structure

If the offering would result in a material change in the registrant's capital structure, furnish the information called for by the following table, in substantially the tabular form indicated, as to each class of securities of the registrant and each class of securities, other than those owned by the registrant or its totally held subsidiaries, of all subsidiaries whose financial statements are filed with the registration statement on either a consolidated or individual basis:

Title of class	Amount authorized or to be authorized	Amount outstanding as of a specified date within 90 days	Amount to be outstanding if all securities being registered are sold

Instructions. 1. Securities held by or for the account of the issuer thereof are not to be included in the amount outstanding, but the amount so held shall be stated in a note to the table. Also set forth in a note to the table a cross reference to the note in the financial statements containing information concerning the extent of obligations under leases on real property.

2. Indebtedness evidenced by drafts, bills of exchange, bankers' acceptances or promissory notes may be set forth in a single aggregate amount under an appropriate caption such as "Sundry Indebtedness."

3. A registrant may, at its option, include in the table the capital share liability in dollars, as well as the amount, of each class of shares shown in the table, together with capital surplus and earned surplus. Surplus shall be shown in the same manner as in the balance

sheet of the registrant, or in the consolidated balance sheet of the registrant and subsidiaries, if such a consolidated balance sheet is included in the prospectus.

Item 6. Description of Business

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries and any predecessor(s) during the past five years, or such shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

(1) In describing developments, information shall be given as to matters such as the following: the year in which the registrant was organized and its form of organization; the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

Instruction: The following requirement in paragraph (2) applies only to registrants (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the registration statement.

(2) Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year if the registration statement is filed subsequent to the end of the second fiscal quarter. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan should include such matters as:

(i) A statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant. The specific reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditure and cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, such budget should be furnished to the Commission as supplemental information, but not as a part of the registration statement.

(ii) An explanation of material product research and development to be performed during the period covered in the plan.

(iii) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(iv) Any anticipated material changes in number of employees in the various departments such as research and development production, sales or administration.

(v) Other material areas which may be peculiar to the registrant's business.

(b) *Narrative description of business.*

(1) Describe the business done and intended to be done by the registrant and its subsidiaries. Such description should include, if material to an understanding of the registrant's business, a discussion of:

(a) The principal products produced and services rendered and the principal markets for and methods of distribution of such products and services.

(b) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the registrant or is otherwise material.

(c) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(d) The number of persons employed by the registrant indicating the number employed full time.

(e) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the registrant may deem material.

(2) The registrant should also describe those distinctive or special characteristics of the registrant's operations or industry which may have a material impact upon the registrant's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customer or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(c) *Segment data.* If the registrant is required to include segment information in its financial statements, such information may be disclosed in the description of busines or in the financial statements. If such information is included in the financial statements, an appropriate cross reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the registrant and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction. What is required is information essential to an investor's appraisal of the securities being registered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Legal Proceedings

Briefly describe any material legal proceedings other than ordinary routine litigation incidental to the business to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by government authorities.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceeding to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 5 percent of any class of voting securities of the registrant, or any associate of any such director, officer or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

5. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, state or local provisions which have been enacted or adopted regulating the discharge of materials into the

environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceed 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; *Provided, however,* That such proceedings which are similar in nature may be grouped and described generically, stating: The number of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 9. Directors and Executive Officers

(a) *Identification of directors.* List the names and ages of all directors of the registrant, and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; briefly describe any arrangement or understanding between him and any other person or persons (naming such person (s)) pursuant to which he was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such should be named in response to this item.

(b) *Identification of executive officers.* List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such should be named in response to this item.

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the registrant.

(c) *Identification of certain significant employees.* Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers.

(d) *Family relationships.* State the nature of any family relationship between any director, executive officer, person nominated or chosen by the registrant to become a director or executive officer or any person named in response to paragraph (c).

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (e) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) Directorships. Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940, naming such company.

(f) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker, or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association, or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of Federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3) of this section or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or state securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the 5-year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this subparagraph (f) has occurred and information in regard thereto is omitted on the ground that it is not material, the registrant may furnish to the Commission, at time of filing, as supplemental information and not as part of the registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

Item 10. Remuneration of Directors and Officers

Furnish the following information in substantially the tabular form indicated as to all remuneration concerning the following persons for services in all capacities:

(a) Each of the five highest paid persons who are officers or directors of the registrant whose aggregate remuneration exceeded $50,000, naming each such person.

(b) All directors and officers of the registrant as a group, without naming them.

Name of individual or identity of group	Capacities in which remuneration was received	Aggregate Remuneration

Instructions. 1. Information is to be included as to all options, securities, or other property given for services, annuity, pension, or retirement benefits; bonus or profit sharing plans; future remuneration; or personal benefits. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item applies to any person who was a director or officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the registrant.

3. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

4. If the registrant has not completed a full fiscal year since its organization or if it acquired or is to acquire the majority of its assets from a predecessor within the current fiscal year, the information shall be given for the current fiscal year, estimating future payments, if necessary. To the extent that such remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state such percentage without estimating the amount of such profits to be paid.

5. Personal benefits. Disclosure shall be provided as to the value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified persons and groups, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified persons.

(a) *Valuation.* Such benefits shall be valued on the basis of the registrant's and subsidiaries' aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, should be made in a footnote to the table.

(b) *Conditional exclusion of personal benefits.* If the registrant cannot determine without reasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table provided the following condition is met:

Inquiry. After reasonable inquiry, the registrant has concluded that the aggregate amounts of such personal benefits which cannot be specifically or precisely ascertained do not in any event exceed $10,000 as to each person or, in the case of a group, $10,000 for each person in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

(c) *Footnote disclosure.* If as to a person named in the table an amount representing personal benefits included in the table exceeds 10 percent of the aggregate amount disclosed or $25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of the amount disclosed represented by such personal benefits and briefly describing the kinds of such benefits.

6. Information relating to any pension or retirement benefits need not be disclosed if the amounts to be paid are computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

7. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments should be stated.

Item 11. Options to Purchase Securities

Furnish the following information as to options to purchase securities from the registrant or any of its subsidiaries which are outstanding as of a specified date within 30 days prior to the date of filing.

(a) Describe the options, stating the material provisions including the consideration received and to be received for such options by the grantor thereof and the market value of the securities called for on the granting date. If, however, the options are "qualified stock options" or "restricted stock options" or "options granted pursuant to a plan qualifying as an employee stock purchase plan," as those terms are defined in Section 422–424 of the Internal Revenue Code of 1954, only the following is required: (i) A statement to that effect, (ii) a brief description of the terms and conditions of the options or of the plan pursuant to which they were issued, and (iii) a statement of the provisions of the plan or options with respect to the relationship between the option price and the market price of the securities at the date when the options were granted, or with respect to the terms of any variable price option.

(b) State (i) the title and amount of the securities called for by such options; (ii) the purchase prices of the securities called for and the expiration dates of such options; and (iii) the market value of the securities called for by such options as of the latest practicable date.

Instruction. In case a number of options are outstanding having different prices and expiration dates, the options may be grouped by prices and dates. If this produces more than five separate groups, then there may be shown only the range of the expiration dates and the average purchase prices, i.e., the aggregate purchase price of all securities of the same class called for by all outstanding options to purchase securities of that class divided by the number of securities of such class so called for.

(c) Furnish separately the information called for by paragraph (b) above for all options held by (i) each director or officer named in answer to Item 10(a) naming each such person, (ii) all directors and officers as a group without naming them, (iii) all affiliates of the issuer, and (iv) in all promoters.

Instructions. 1. The term "options" as used in this item includes all options, warrants and rights other than those issued to security holders on a pro rata basis.

2. The extension of options shall be deemed the granting of options within the meaning of this item.

3. Where the total market value of securities called for by all outstanding options as of the specified date referred to in this item does not exceed $10,000 for any officer or director named in answer to Item 10(a), or $50,000 for all officers and directors as a group, or for all option holders as a group, this item need not be answered with respect to options held by such person or group.

Item 12. Security Ownership of Certain Beneficial Owners and Management

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d–3(d)(1) (17 CFR 240.13d–3(d)(1)) under the Exchange Act.

(1) Title of Class	(2) Name and Address of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned by all directors naming them and directors and officers of the registrant as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in Rule 13d–3(d)(1) [17 CFR 240.13d–3(d)(1)] under the Exchange Act.

(1)	(2)	(3)
Title of Class	Amount Beneficially Owned	Percent of Class

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries plus securities deemed outstanding pursuant to Rule 13d–3(d)(1) (17 CFR 240.13d–3(d)(1)) under the Exchange Act.

2. For the purposes of this item, beneficial ownership shall be determined in accordance with Rule 13d–3 (17 CFR 240.13d–3) under the Exchange Act. Include such additional sub-columns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4), shared investment power.

3. For purposes of furnishing information pursuant to paragraph (a), the registrant may indicate the source and date of such information.

4. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

5. Paragraph (c) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

6. If any of the securities being registered are to be offered for the account of security holders, name each such security holder and state the amount of securities owned by him, the amount to be offered for his account, and the amount to be owned after the offering.

7. If, to the knowledge of the registrant or any principal underwriter of the securities being registered, more than five percent of any class of voting securities of the registrant are held or are to be held subject to any voting trust or similar arrangement, state the title of such securities, the amount held or to be held and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.

Item 13. Interest of Management and Others in Certain Transaction

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any security holder named in answer to Item 12(a); or

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the registrant.

Instructions. 1. See Instruction 2 to Item 10(a). No information need be given in response to this Item as to any remuneration or other transaction reported in response to Item 10 or specifically excluded from Item 10.

2. No information need be given in answer to this Item as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this Item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) From the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (3) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership.

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

4. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

5. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be aprincipal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

6. As to any transaction involving the purchase or sale of assets by or to the registrant or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular transaction. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

Item 14. Securities Being Registered

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) pre-emptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the registrant.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) Outline briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking funds installments. If there is no such restriction, so state.

Instructions. 1. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct résumé is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being registered.

(b) If long-term debt is being registered, outline briefly such of the following as are relevant:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instructions. 1. In the case of secured debt, there should be stated (i) the approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, against the deposit of cash, or otherwise.

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, or the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(5) The name of the trustee and the nature of any material relationship with the registrant or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(6) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the identure.

Instruction. Instructions 1 and 2 under paragraph (a) above shall also apply to this item. Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this form.

(c) If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Item 15. Financial Statements and Instructions

The following financial statements for the issuer, or for the issuer and its predecessors, prepared in accordance with generally accepted accounting principles and practices shall be filed as a part of the registration statement. Regulation S–X, Form and Content of Financial Statements, shall not apply to the preparation of such financial statements. The report of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X.

(a) Balance Sheets of the Registrant.

(1) The registrant shall file a consolidated balance sheet as of a date within 90 days prior to the date of filing the registration statement. This balance sheet need not be audited if it is not as of the latest fiscal year.

(2) If the balance sheet required by paragraph (a) is not audited, there shall be filed in addition an audited balance sheet as of a date within one year unless the fiscal year of the registrant has ended within 90 days prior to the date of filing, in which case the audited balance sheet may be as of the end of the preceding fiscal year.

(b) Statements of Income, Changes in Financial Condition, and Other Stockholders' Equity.

The registrant shall file consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed and for the interim period, if any, between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed. These statements shall be audited to the date of the most recent audited balance sheet being filed.

If an income statement is filed for an interim period, an unaudited income statement for a comparable period of the prior year shall also be filed. In connection with any unaudited income statements for an interim period, a statement shall be made that all adjustments necessary for a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise these shall be furnished as supplementary information, but not as a part of the registration statement, in a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments, entering into the determination of the results shown.

(c) Past Successions to Other Businesses.

(1) If, during the period for which its income statements are required, the registrant has by purchase or by pooling of interests succeeded to one or more businesses which in the aggregate are significant, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any interim periods. In addition, furnish audited income statements, separate or combined as appropriate, for such business or businesses for such period prior to the purchase as may be necessary when added to the time, if any, for which income statements after the purchase are filed to cover the same period for which income statements of the registrant are required in Item (b) above. The test of significance shall be based on the tests used

in the term "significant subsidiaries" in Article 1.02(u) of Regulation S–X. [16]

(2) This instruction shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

(d) Future Successions to Other Businesses.

(1) If, after the date of the most recent balance sheet filed pursuant to paragraph (a) above, the registrant by purchase or by pooling of interests succeeded or is about to succeed to one or more businesses or acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, which would be required if they were registering securities on Form S–18 under the Act. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (i) a balance sheet of the registrant, (ii) the balance sheets of the constituent businesses, (iii) the changes to be effected in the succession, and (iv) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed pro forma statements of income in columnar form for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(2) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(3) No financial statements need by filed, however, for any business acquired or to be acquired, or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subsidiary as defined in Article 1.02(u) of Regulation S–X.

(e) The financial statements shall be presented in accordance with generally accepted accounting principles and practices in the United States or, in the case of a Canadian company, a reconciliation to such shall be provided.

Part II

Information Not Required in Prospectus

Item 16. Marketing Arrangements

Briefly describe any arrangement known to the registrant or to any person named in answer to Item 2 or 10(a) made for any of the following purposes:

(a) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution.

(b) To stabilize the market for any of the securities to be offered.

(c) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of his participation.

Instruction. If the answer to this item is contained in an exhibit, the item may be answered by cross-reference to the relevant paragraphs of the exhibit.

Item 17. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions.

Instruction. Insofar as practicable, registration fees, Federal taxes, State taxes and fees, trustees' and transfer agents' fees, cost of printing and engraving, and legal, accounting and engineering fees shall be separately itemized. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 18. Relationship with Registrant of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection.

Instruction. In the case of an accountant, any direct financial interest or any material indirect financial interest held during the period covered by the financial statements prepared or certified shall be deemed a "substantial interest" for the purpose of this item.

Item 19. Recent Sales of Unregistered Securities

Furnished the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the Rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as to notes, drafts, bills of exchange or bankers' acceptances which mature not later than nine months from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 20. Exhibits

List all exhibits filed as a part of the registration statement.

(a) Exhibits.

(b) Statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Idenure Act of 1939.

Undertakings

A. The following undertaking should be included in the registration statement if equity securities are to be offered:

"The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser."

Note.— Any request for acceleration should be accompanied by a representation from the underwriter that the registrant has been requested to provide sufficient certificates in such denominations as to permit prompt delivery.

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[16] Article 1.02(u) of Regulation S–X provides that the term "significant subsidiary" means (1) a subsidiary or (2) a subsidiary and its subsidiaries which meet any of the conditions described below based on (i) the most recent annual financial statements, including consolidated financial statements, of such subsidiary which would be required to be filed if such subsidiary were a registrant and (ii) the most recent annual consolidated financial statements of the registrant being filed:

(a) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets (after intercompany eliminations) of, the subsidiary exceed 10 percent of the total assets of the parent and its consolidated subsidiaries.

(b) The parent's and its other subsidiaries' proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total sales and revenues of the parent and its consolidated subsidiaries.

(c) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10 percent of such income of the parent and its consolidated subsidiaries: *Provided*, That if such income of the parent and its consolidated subsidiaries is at least 10 percent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination.

As defined in Article 1.02(v) of Regulation S–X, a "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

B. The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public.

"The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of————, and State of ————, on the —— day————, 19—.

(Registrant)

By————

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Date)————

(Signature)

(Title)

Instructions. 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions. If the registrant is a Canadian person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

Instructions as to Exhibits

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for by Item 18.

1. Copies of each underwriting contract with a principal underwriter, each syndicate agreement and each purchase, sub-underwriting or selling group agreement or letter pursuant to which the securities being registered are to be distributed or, if the terms of such documents are not determined, the proposed forms thereof.

2. Copies of the charter and by-laws as presently in effect.

3. (a) Specimens or copies of all securities being registered hereunder and copies of all constitutent instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) There need not be filed, however, (1) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 5% of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such instrument to the Commission upon request, (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered, or (3) copies of instruments evidencing script certificates for fractions of shares.

(c) If any of the securities being registered are, or are to be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents, and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to Section 310 through 319(a) inclusive of the Trust Indenture Act of 1939.

4. Copies of any plan setting forth the terms and conditions upon which outstanding options, warrants or rights to purchase securities of the registrant or its subsidiaries from the registrant or any of its affiliates have been issued, together with specimen copies of such options, warrants, or rights; or, if not issued pursuant to such a plan, copies of each such option, warrant or right.

5. An opinion of counsel, as to the legality of the securities being registered, indicating whether they will when sold be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

6. Copies of each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or of the proceeds therefrom has been or is to be used for the particular purpose of acquiring, developing or exploiting one or more material patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

7. If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

8. If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

9. Copies of any voting trust agreement referred to in answer to Item 10.

10. Copies of all pension, retirement or other deferred compensation plans, contracts or arrangements. If any such plan, contract or arrangement is not set forth in a formal document, furnish a reasonably detailed description thereof. Copies of any available booklet or other written description of any such plan, contract or arrangement shall also be filed.

11. (a) Copies of every material contract not made in the ordinary course of business which is to be performed in whole or in part at or after the filing of the registration statement or which was made not more than two years before filing, except contracts called for, or the omission of which is expressly authorized by the foregoing instructions. Only contracts need be filed as to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment, or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Directors, officers, promoters, voting trustees, security holders named in answer to Item 12 or underwriters are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It is of such materiality as to call for specific reference to it in the prospectus.

(3) The registrant's business is substantially dependent upon it, as in the case of continuing contracts to sell the major part of registrant's production in the case of a manufacturing enterprise or to purchase the major part of registrant's requirements of goods in the case of a distributing enterprise, or licenses to use a patent or formula upon which registrant's business depends to a material extent.

(4) It calls for the acquisition or sale of fixed assets for a consideration exceeding

15% of all fixed assets of the registrant and its subsidiaries.

(5) It is a lease under which a significant part of the property described under Item 7 is held by the registrant, or

(6) The amount of the contract, or its importance to business of the registrant and its subsidiaries, are material, and its terms and conditions are of a nature of which investors reasonably should be informed.

(c) Any management contract or bonus or profit-sharing plan, contract or arrangemet (or if not set forth in any formal document, a written description thereof) except the following, shall be deemed material and shall be filed:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

Appendix

Prior Delivery of Preliminary Prospectus Securities Act Release No. 4968 (April 24, 1969)

The Commission again called attention to the continued high volume of registration statements filed under the Securities Act of 1933, and noted that the number of companies filing registration statements for the first time continues to mount, so that well over half of the filings now being made are by such companies.The Commission emphasized that the investing public should be aware that many such offerings of securities are of a highly speculative character and that the prospectus should be carefully examined before an investment decision is reached. It is characteristic of such speculative issues that the company has been recently organized, that the promoters and other selected persons have obtained a disproportionately large number of shares for a nominal price with the consequent dilution in the assets to be contributed by the investing public, and that the underwriters receive fees and other benefits which are high in relation to the proceeds to the issuer and which further dilute the investment values being offered.

The Commission has declared its policy in Rule 460 (17 CFR 230.460) that it will not accelerate the effective date of a registration statement unless the preliminary prospectus contained in the registration statement is distributed to underwriters and dealers who it is reasonably anticipated will be invited to participate in the distribution of the security to be offered or sold. The purpose of this requirement is to afford all persons effecting the distribution a means of being informed with respect to the offering so that they can advise their customers of the investment merits of the security. Particularly in the case of a first offering by a nonreporting company, salesmen should obtain and read the current preliminary or final prospectus before offering the security to their clients.

The Commission also announced, in the exercise of its responsibilities in accelerating the effective date of a registration statement under section 8(a) of the Securities Act of 1933, and particularly the statutory requirement that it have due regard to the adequacy of the information respecting the issuer theretofore available to the public, that it will consider whether the persons making an offering of securities of an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, have taken reasonable steps to furnish preliminary prospectuses to those persons who may reasonably be expected to be purchasers of the securities. The Commission will ordinarily be satisfied by a written statement from the managing underwriter to the effect that it has been informed by participating underwriters and dealers that copies of the preliminary prospectus complying with Rule 433(a) (17 CFR 230.433(a)) have been or are being distributed to all persons to whom it is then expected to mail confirmations of sale not less than 48 hours prior to the time it is expected to mail such confirmations. Such distribution should be by air mail if the confirmations will be sent by air mail, or a longer period to compensate for the difference in the method of mailing the prospectus should be provided. Of course, if the form of preliminary prospectus so distributed was inadequate or inaccurate in material respects, acceleration will be deferred until the Commission has received satisfactory assurances that appropriate correcting materials (including a memorandum of changes) has been so distributed.

In view of the situation above discussed, the Commission proposes to invoke this acceleration policy immediately. When the Commission gains sufficient experience under this policy, it anticipates proposing appropriate revision of its rules.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Section 249.310 is amended by amending the General Instructions and Instructions as to Financial Statements as follows:

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

General Instructions

* * * * *

J. *Issuers Filing on Form S–18*

If the issuer is subject to the reporting requirements of Section 15(d) of the Exchange Act and such obligation results solely from the issuer having filed a registration statement on Form S–18 which has become effective during the last fiscal year, the issuer may include the information called for by Form S–18 Item 6, Description of Business; Item 10, Remuneration of Directors and Officers; and Item 13, Interest of Management and Others in Certain Transactions, in lieu of the information called for by Item 1, Business, and Item 15, Remuneration and Transactions, herein. Item 2, Summary of Operations, may be omitted at the election of such issuer.

If a registrant remains subject to Section 15(d), or becomes subject to Section 12, after the year of its Form S–18 offering, it will then be required to comply with the general Form 10–K item requirements for its subsequent reports.

* * * * *

Instructions as to Financial Statements

* * * * *

(9) *Issuers Filing on Form S–18*

(a) Notwithstanding the requirements of the foregoing instructions, if the issuer is subject to the reporting provisions of Section 15(d) and such obligation results solely from the issuer having filed a registration statement on Form S–18 which has become effective under the Securities Act of 1933 during the last fiscal year, the following audited financial statements for the issuer, or the issuer and its predecessors, prepared in accordance with generally accepted accounting principles and practices may be filed. The provisions of Regulation S–X, Form and Content of Financial Statements, shall not apply to financial statements prepared pursuant to this instruction. The report of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X.

(1) A balance sheet shall be furnished as of the end of each of the last two fiscal years.

(2) Consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity shall be furnished for each of the last two full fiscal years.

(b) A Form 10–K filed for the fiscal year immediately following the fiscal year during which the registrant has had a registration statement on Form S–18 become effective may include financial statements prepared as follows:

(1) Financial statements for the most recent fiscal year shall be prepared in accordance with Regulation S–X.

(2) Financial statements for the prior year, previously disclosed in the Registration Statement on Form S–18 in accordance with generally accepted accounting principles and practices, do not need to include the compliance items and schedules of Regulation S–X, but should be recast to show the same line items as are set forth for the most recent fiscal year.

(10) *Filing of Other Financial Statements in Certain Cases*

[No change from former instruction 9 of Instructions As to Financial Statements of Form 10–K]

* * * * *

Effective Date and Certain Findings

Form S–18 and related amendments are effective April 10, 1979.

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they would impose no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed, and is necessary and appropriate to achieve,

the benefits of these amendments to investors and registrants.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 90k; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 10, 78 Stat. 569, 570–574, 580; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78m, 78o(d), 78w(a)))

Statutory Authority

The adoption of Form S–18, the amendments of Rules 27 and 30–6 of the Commission's Organization Rules, the amendments of Rules 455 and 463 under the Securities Act of 1933, and the amendment to Guide 23 of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 are pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The amendment to Form 10–K is pursuant to Sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934.

The Commission finds that any changes in the amended provisions from those published in Securities Act Release No. 5915 have already been generally subject to comment and are either technical in nature or less burdensome than previous proposals so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

Shirley E. Hollis,
Assistant Secretary.
April 3, 1979.

[Release No. 33–6049; 34–15691]
[FR Doc. 79–11036 Filed 4–9–79; 8:45 am]
BILLING CODE 8010–01–M

Federal Register

Tuesday
April 10, 1979

Part VII

Department of Transportation

Urban Mass Transportation Administration

Urban Initiatives Program; Guidelines

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Urban Initiatives Program; Program Guidelines

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing a notice containing its guidelines for the Urban Initiatives Program which explains and implements the Program. The Program provides funding for certain mass transportation related projects that enhance urban development.

DATES: 1. The guidelines in this notice are effective April 4, 1979.

2. Comments on the guidelines must be received by June 8, 1979.

ADDRESS: Comments on the guidelines should be submitted to UMTA Docket No. 79–A, Urban Mass Transportation Administration, Room 9320, UCC–10, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Grants Assistance, Phone: (202) 472–7037.

SUPPLEMENTARY INFORMATION: On March 27, 1978, the President announced his Urban Policy which consists of a comprehensive set of policy statements to guide Federal actions for urban America. On February 15, 1979, the Secretary of Transportation announced that UMTA would administer an Urban Initiatives Program which follows the guidelines established by the President's Policy.

Transit-related projects that contribute to the revitalization of the nation's cities are eligible for funding under the Program. UMTA has programmed funds totaling $200 million for fiscal year 1979 to assist in financing urban transit and transit-related projects, such as joint development, intermodal terminals, and transit malls, that enhance public transportation, encourage economic and community development, and stimulate new employment among long-term unemployed and disadvantaged people in urban areas. The funding level is expected to remain constant at a ceiling of $200 million per year through FY 1983.

Applications for Urban Initiatives Program grants will be accepted and processed through UMTA's regional offices. The most promising projects will be referred to UMTA Headquarters, where they will be placed in national competition for funding. The projects selected for funding will be those that best meet the UMTA criteria and contribute most to the achievement of the President's Policy objectives. The guidelines for applicants are set out in the Appendix to this notice.

Interested parties are invited to submit written views or comments concerning the guidelines. Each comment should include the name and address of the person submitting the comment, reference the docket number (79–A), identify the specific section of the guidelines to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before the expiration of the comment period will be considered before any changes are made to the guidelines.

The Administrator has determined that it is in the public interest to issue the guidelines immediately in order to assure full understanding of the implementation of this program which is beneficial to the public. However, opportunity for public comment is being provided because it is anticipated that it will result in UMTA receiving useful information to aid in assessing the guidelines.

Dated: April 4, 1979.

Richard S. Page,
Administrator.

Appendix—Urban Initiatives Guidlines

I. Background and Program Objectives

On March 27, 1978, the President announced his Urban Policy which consists of a comprehensive set of policy statements to guide Federal actions and programs for urban America. The Urban Mass Transportation Administration will carry out the mass transit component of the Urban Policy through an *Urban Initiatives Program*, authority for which is provided in Section 3(a)(1)D of the Urban Mass Transportation Act of 1964, as amended (the Act) (this section was amended by Sec. 302(a) of the Surface Transportation Assistance Act of 1978). This section authorizes the financing of "transportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic development or incorporate private investment including commercial and residential development."

The Act further identifies activities eligible for funding by specifying that "the term 'eligible costs' includes property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and the acquisition, construction, and improvement of facilities and equipment for intermodal transfer facilities and transit malls, but does not include the construction of commercial revenue-producing facilities, whether publicly or privately owned, or of those portions of public facilities not related to mass transportation. The Secretary shall require that all grants and loans under this paragraph be subject to such terms, conditions, requirements, and provisions as the Secretary determines necessary or appropriate for purposes of this section, including requirements for the disposition of net increases in value or real property resulting from the project assisted under this section."

II. Eligible Recipients

Any public agency eligible for UMTA planning or capital assistance is eligible for *Urban Initiatives* grants and loans. For example, transit authorities, local governments, States, and their agencies are eligible for capital grants and loans. In addition, Metropolitan Planning Organizations are eligible for planning grants and may pass funds through to local governments, transit authorities and quasi-public development corporations. UMTA will not fund a quasi-public development corporation directly, unless it qualifies as a public body. A public body may, however, pass through funds to such a quasi-public development corporation to manage a project.

III. Funding

The funding authorization for the Urban Initiatives Program is found in Section 4(c)(1)(B) of the Act. "In each fiscal year, not more than $200,000,000 of the sums appropriated pursuant to subparagraph (A) shall be available for grants and loans approved under Section 3(a)(1)(D) of this Act."

In each fiscal year, up to $200,000,000 of the funds authorized under Section 3 of the Act will be used to finance *Urban Initiatives* grants. This funding level is expected to remain constant at a ceiling of $200 million per year through FY 83.

In developing Section 3 projects, applicants are to be encouraged to undertake sufficient environmental analysis and engineering to enable the project to be fully funded at the time of its initial approval.

In addition to the $200 million Section 3 set-aside, $1 million in Technical Study assistance (Sec. 8 of the Act) has been set aside to support joint development feasibility and market-related analyses. The Section 8 funds will be allocated on an as-needed basis, nationally, to advance joint development concepts to a stage where an application may be submitted for capital assistance.

Funding through FAUS should be sought for those aspects of a project which are FAUS eligible.

IV. Eligible Project Categories

To qualify for consideration under the funding authorization of the *Urban Initiatives Program*, a project must extend beyond the scope of traditional transit improvements to clearly demonstrate a significant degree of impact on the urban physical and economic environment, including increased private investment, enhanced interagency coordination and the support of social goals including increased employment opportunities and accessibility for disadvantages groups.

Projects which do not contain a significant transit element are not eligible for funding.

Transit projects which do not qualify under the Urban Initiatives Program may be eligible for funding through the normal Section 3 process.

In presenting the following categories of eligible *Urban Initiatives* Projects, emphasis is placed on those aspects of the following which will clearly establish compliance with Urban Policy Program Objectives (set out in Section V of these guidelines).

A. Intermodal Transfer Facilities

These include the construction and improvement of facilities which provide for the integration of urban public transportation systems with other forms of public and private transportation such as intercity bus and rail, taxis, and parking in order to increase access and facilitate transfers. The intermodal facility must be the property of a public body. Private entities that contract to occupy space in facilities funded under the *Urban Initiatives* program must pay a fair share of the cost of such facilities, through rental payments and other means. The proceeds from rental payments or other reimbursements must be used to offset eligible local transit expenses.

1. Eligible Project Costs

Eligible projects costs include, but are not limited to:

*Design and engineering studies

*Acquisition of real property, facilities and equipment.

*Roadbeds, tracks and bus ramps.

*Pedestrian concurses, and related equipment and facilities.

*Loading shelters.

*Parking facilities located on the fringe of a major activity center or used in conjunction with park-and-ride services.

*Improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation.

*Passenger terminals which benefit distressed areas.

UMTA funding of parking facilities will be considered on a case-by-case basis. In developing proposals which include parking facilities, the applicant must demonstrate that: (1) The provision of parking is essential to the viability of the project; and (2) the proposed parking will enhance the effectiveness of existing and proposed mass transit services and facilities. In addition, it is desirable that parking facilities proposed for UMTA funding adequately conform to local parking plans and policies which serve to enhance public transportation services. The applicant must provide all necessary documentation regarding the provision and justification for UMTA funding of parking facilities.

B. Transit Malls

Transit malls are a combination of pedestrian system improvements and preferential treatment of transit vehicles on city streets. The most common of these include streets which have been improved for pedestrian us, but retain a roadway reserved exclusively for transit vehicles as part of the city-wide or regional transit system.

1. Eligible Project Costs

Eligible project costs include, but are not limited to:

*Design and engineering.

*Mall construction activities such as surveying, utility relocation (to the extent that the utility is not responsible for such costs), materials testing, construction management.

*Street, sidewalk and utility construction.

*Traffic control devices.

*Street furniture and structures.

*Landscaping.

*Passenger and pedestrian amenities.

C. Joint Development Projects

Joint development projects include commercial, residential, industrial or mixed use developments which may be induced by and/or enhance the effectiveness of mass transportation projects. These include private development activities associated with new rail rapid transit, automated guideway systems, the extensions of existing systems, and Federal, State, or local investments in existing facilities.

Joint development projects must include a transit element. Specifically, projects must: (1) Enhance the effectiveness of a significant mass tansportation project and be physically or functionally related to such mass transportation project; or (2) create new or enhanced coordination between public transportation and other forms of transportation. In addition, all joint development projects must enhance urban economic development through the incorporation of private investment including office, commercial, and/or residential development.

Physically related projects are those projects which provide a direct physical connection with mass transportation services or facilities. They may include projects involving air rights over stations or adjacent property.

Functionally related projects are those projects which are related by activity and use and are functionally linked (with or without direct physical connection) to the mass transportation services or facilities. Functional relationships should reflect the distance most people will walk between transit services and facilities and various other activities and facilities.

The eligible project area will be defined on a case-by-case basis.

1. Eligible Project Costs

Eligible project costs include, but are not limited to:

*Site design, engineering, real estate packaging, and environmental analysis as appropriate.

*Land acquisition and write down, relocation, demolition, site preparation, and project-related utilities.

*Foundations and substructure improvements for buildings over transit facilities.

*Pedestrian connections and access links between mass transportation services and related development.

*Street lighting and integral, project-related parking facilities.

*Open space, site amenities and related street-scape improvements such as street furniture and landscaping.

*Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and mass transportation facilities.

UMTA funding of parking facilities will be considered on a case-by-case basis. In developing proposals which include parking facilities, the applicant must demonstrate that: (1) The provision of parking is essential to the viability of the project; and (2) the proposed parking will enhance the effectiveness of existing and proposed mass transit services and facilities. In addition, it is desirable that parking facilities proposed for UMTA funding adequately conform to local parking plans and policies which serve to enhance public transportation services. The applicant must provide all necessary documentation regarding the provision and justification for UMTA funding of parking facilities.

The eligibility of the costs of utility work associated with private investment, will also be considered on a case-by-case basis. UMTA will not pay for the costs of utility work that are attributable to non-UMTA project purposes unless: (1) The utility serves a joint private and transit use; or (2) the utility lines will be located under a street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset.

Front end and permanent financing costs related to the design and construction of retail, commercial, housing or other public and private revenue producing facilities are not eligible joint development costs.

Section 8 planning funds may be made available to finance real estate market studies, site planning, environmental analysis and real estate packaging leading to the securing of private commitments.

2. Participation in Proceeds Derived From UNTA Investment

Project sponsors must retain for transit-related use selected proceeds and/or profits acquired in connection with UMTA participation in joint development projects. Proceeds and profits may include returns generated from, but not limited to, sales or lease of property and/or returns stemming from local agency participation in the distribution of project revenues.

a. If the basis for determining the UMTA grant is the gross project cost, then:

(1.) *If property is sold* the entire proceeds of the sale up to the amount of the combined UMTA and local investment, may be applied to capital project elements that would be eligible for assistance under Section 3 of the Act, including traditional transit projects, existing Urban Initiatives projects and/or new Urban Initiatives projects, but may not be used for the local share of such federally assisted projects. Should profits result from such a sale, those profits must be used for the above purposes and may also be used as the local share for other similar capital or operating projects.

(2.) *If property is leased,* the entire proceeds of the lease, as well as the proceeds from local agency participation in the distribution of project revenues, up to the amount of the appraised value of the leased property as approved by UMTA, may be applied to capital project elements that would be eligible for assistance under Section 3 of the Act including traditional transit projects, existing urban initiatives projects and/or new urban initiatives projects. UMTA will approve the appraisal value in accordance with the procedures set forth in UMTA Circular 4530.1. Any additional proceeds from the lease beyond the approved appraisal value must be used for the above purposes or as the local share for other similar capital or operating projects.

b. Alternatively, proceeds of the sale, lease or returns from project revenues may be deducted from the gross project cost to arrive at net project cost.

3. Timing and Degree of Public and Private Commitments

Project negotiations typically progress through the following stages:

1. Executing letters of intent between local public agencies, developers, and financial institutions.

2. Executing development contracts and securing building permits.

3. Executing construction contracts.

UMTA's commitment to fund the project will depend on the stage of local negotiations. If the applicant has not progressed to Stage 1, UMTA would be reluctant to make a commitment to participate in the project. This will not preclude UMTA from making grants for preliminary engineering, design, appraisals and other analyses, which will allow costs to be more accurately defined. At Stage 1, UMTA may issue a grant, but would in most instances restrict its commitment to a notice that it is setting aside funds for the project pending completion of final negotiations. At Stages 2 and 3, the local commitment would be sufficiently secure to allow UMTA to issue a grant. However, the timing and degree of mutual commitments will be adjusted to reflect the needs of particular situations.

V. Project Selection Criteria and Requirements

In order to achieve the objectives of the *Urban Initiatives Program* a three step project selection process is outlined. First, the projects will be evaluated to determine the extent to which they meet the objectives of the President's Urban Policy. Second, in assessing the project's eligibility, special preference will be given to those projects which are located in distressed areas, are coordinated with other Federal agencies, or represent a special or unique opportunity to meet high priority local needs which are consistent with the overall objectives of the President's Urban Policy. Third, each project must meet standard UMTA Section 3 requirements.

A. Policy Objectives

The objectives of the President's Urban Policy Statement are as follows:

1. Encourage and support efforts to improve local planning and management capacity, and the effectiveness of existing Federal programs by coordinating these programs, simplifying planning requirements, reorienting resources, and reducing paperwork.

2. Encourage States to become partners in assisting urban areas.

3. Stimulate greater involvement by neighborhood organizations and voluntary associations.

4. Provide fiscal relief to the most financially hardpressed communities.

5. Provide strong incentives to attract increased private investment in distressed communities.

6. Provide increased employment opportunities, primarily in the private sector, for the long-term unemployed and disadvantaged in urban areas.

7. Increase access to opportunities for those disadvantaged by a history of discrimination.

8. Improve the urban physical environment and the cultural and aesthetic aspects of urban life.

B. Criteria for Meeting Objectives

Applicants for grants to assist in funding projects under the Urban Initiatives Program should demonstrate how the proposed project will meet the objectives of the President's Urban Policy Statement as reflected in the following criteria:

1. Transit

Projects must demonstrate a positive impact on transit patronage and quality of service. Projects may also qualify if they demonstrate positive transit impact through:

—Improvements in accessibility and equity of service for elderly and handicapped and minority communities

—Increased system security and attractiveness

—Improvements allowing for more efficient use and operation of physical facilities.

Projects must increase public transportation access to employment, social, education, health, recreational and residential opportunities. The application must include a description of any related changes in the transit operation which, though not part of a specific project, will increase public access and facilitate circulation, i.e., preferential bus treatment, reduced headways, increased service, special demonstrations, etc.

2. Socio-economic

A. Each applicant must document the degree to which the project will directly provide employment for the economically disadvantaged and those disadvantaged by a history of discrimination. It is UMTA's intent to maximize the direct and general opportunities for employing the unemployed and CETA employees on the project. The applicant must document how these employment opportunities are to be made available. In order to enhance the priority of a project, an applicant should also include an employment plan which indicates that private sector jobs established as a result of, or in conjuction with the UMTA investment are available to the unemployed. This plan should address the following:

—*Anticipated Employment Impacts:* A summary of the number and kind of private sector jobs to be established as a result of the project. Where they are known, identify the firms which have indicated that they will locate or expand when the project is implemented.

—*Local Training and Employment Programs:* A description of the existing local training and employment programs and identification of the provider (i.e., CETA prime sponsor) whose programs can best be linked with the economic development effort.

—*Extent of Linkage:* An estimate of the percentage of the jobs which will be made available to people referred from the training and employment programs including a definition of the kinds of jobs involved.

—*Linkage Program:* Define the planned procedures for recruiting, screening and placing referrals from the local training and employment program. Include a description of the roles of the local training provider, the grant recipient and the private sector employers (when they are not the grant recipient). Define arrangements made with labor unions, as appropriate.

— *Coordination of Training Provider and Private Employers:* A discussion of the coordination with the local training and employment provider as to the described plan (letter, signed joint agreement, etc.). Evidence of coordination with the private employers identified to date with the employment program must be provided.

— *Timetable for Implementation:* A discussion of the anticipated time frame for implementing the various components of the employment program.

B. *Project should strengthen the Urban economic base*—The applicant should document increased revenues accruing to the City as a result of the project including increases in property valuation, property and payroll taxes and estimated impacts of primary and secondary development.

C. *Project should enhance the immediate physical environment around the project*—The applicant should document the extent to which the project is a part of larger development plans or projects. It should identify potential secondary development including private as well as public investment; a timetable for such development; and interface, if any, between project and future development. Changes in the nature of transportation services,

accessibility and related impacts of broader development plans (and spin-off projects) (parking regulations, auto restrictions, impacts on air and noise pollution, etc.) should be identified.

D. Project should stimulate greater involvement by neighborhood organizations and voluntary associations.

3. Development

* Projects should incorporate and/or have the potential to engender significant private sector investment—It is not possible to identify a strict ratio of private to public investment to be used as a minimum threshold or for comparative purposes. The prevailing urban, economic, and developmental climate require case-by-case evaluation.

It is expected, however, that Joint Development projects will directly incorporate higher proportions of private investments than other types of *Urban Initiatives Projects*. Ideally UMTA will be looking for projects which generate substantially more private commitment than the total Federal money requested. However, considerations should be given to the various projects as well as the context in which they are being proposed in evaluating the amount of private investment being leveraged. At this time applicants are encouraged to secure the highest/optimum ratio for the project and provide documentation as to how ratios were arrived at. Experience with developing initial projects may eventually refine the methodology.

C. Special Considerations

The extent to which projects meet the three criteria above determines their priority within the *Urban Initiatives Program*. However, in establishing priorities, special consideration will be given to:

1. Projects which are located in those cities or sections of cities which have been determined to be *distressed* by the Department of Housing and Urban Development (HUD), Urban Development Action Grant Program (UDAG). Rules and regulations governing the basis for determining city's economic status are in Subpart G of Part 570 of Title 24 of the Code of Federal Regulations.

Cities which are not on the HUD list may still qualify for special consideration if applicants can provide documentation that another Federal agency, i.e. Economic Development Agency, or Department of Interior, identifies the City or the portion of it which includes the project, as distressed.

2. Projects which target UMTA funds cooperatively with HUD, EDA, and other Federal resources to maximize the economic development potential of Federal investments.

Where appropriate, projects should be developed in maximum cooperation with planned or committed Department of Housing and Urban Development, Department of Commerce, Economic Development Administration, and other Federal program resources. For example, projects should seek to employ procedures to utilize existing employment and/or training programs (CETA). The emphasis of such programs should be oriented towards identified future employment opportunities that will be generated by Federal fiscal commitments.

UMTA is currently developing agreements with other Federal agencies which will detail the programs, projects, and procedures which will receive priority for Federal inter-agency coordination at the local and regional levels under the *Urban Initiatives Program*.

3. Projects which represent a *special* or *unique* opportunity to meet local priority needs which are consistent with the overall objectives of the President's Urban Policy.

D. Each project must meet the requirements for a Section 3 grant. These requirements are in Appendix III of the UMTA External Operating Manual.

Each project must also:

1. Possess adequate local public and private funds to assure implementation. Anticipated local public and private commitment must be identified in the application.

2. Identify the relationships of the project to existing plans and document the basis for selection of the proposed development plan.

VI. Application Procedures

The Urban Mass Transportation Administration will announce grants to support projects in the transportation element of the President's *Urban Initiatives Program* on a Quarterly basis.

Existing application procedures will be followed as outlined in UMTA's External Operating Manual. Technical studies should develop information related to each of the project selection criteria described above. Application for capital assistance should include discussion showing the degree to which the project satisfies the criteria and meets UMTA requirements.

Prospective applicants are encouraged to indicate their interest by letter, and receive an UMTA response before expending effort on a formal application. Letters should include a brief description of the total project, with a separate discussion of the elements to be funded by UMTA. Other participating Federal agencies should be identified and the amount of their financial commitment listed. In describing the project, emphasis should be placed on its social, development and transit impacts.

Requests for information and application should be directed to the appropriate UMTA Regional Office. A list of these offices is set out below:

UMTA Field Offices

Region I: Peter N. Stowell, Regional Director, Transportation Systems Center, Kendall Square, 55 Broadway, Cambridge, MA 02142, Tel: (617) 494–2055.

Region II: Hiram Walker, Regional Director, Suite 14–130, 26 Federal Plaza, New York, NY 10007, Tel: (212) 264–8162.

Region III: Franz K. Gimmler, Regional Director, Suite 1010, 434 Walnut Street, Philadelphia, PA 19106, Tel: (212) 597–8098.

Region IV: Doug Campion, Regional Director, Suite 400, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309, Tel: (404) 881–3948.

Region V: Theodore Weigle, Regional Director, Suite 1740, 300 S. Wacker Drive, Chicago, IL 60606 Tel: (312) 353–2789.

Region VI: Glen Ford, Regional Director, Suite 9A32, 819 Taylor Steet, Fort Worth, TX 76102, Tel: (817) 334–3787.

Region VII: Lee Waddleton, Regional Director, Suite 303, 6301 Rock Hill Road, Kansas City, MO 64131, Tel: (816) 926–5053.

Region VIII: Lou Mraz, Regional Director, Suite 1822, Prudential Plaza, 1050 17th Street, Denver, CO 80265, Tel: (303) 837–3242.

Region IX: Dee Jacobs, Regional Director, Suite 620, Two Embarcadero Center, San Francisco, CA 94111 Tel: (415) 556–2884.

Region X: F. William Fort, Regional Director, Suite 3142, Federal Building, 915 Second Avenue, Seattle, WA 98174, Tel: (206) 442–4210.

[Docket No. 79–A]

[FR Doc. 79–11106 Filed 4–9–79; 8:45 am]

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Tuesday
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Part VIII

Department of Energy

Federal Energy Regulatory Commission

Rules Relating to Investigations

Form 423 Data; Collection and Dissemination Procedures; Order Terminating Proceeding

Note.—At 44 FR 18517, March 28, 1979, FR Doc. 79–9545 bearing Docket No. RM78–15, Rules Relating to Investigations, appeared under the heading Department of Energy, Federal Energy Regulatory Commission. The text incorrectly consisted of portions of two separate rulemaking dockets. FR Doc. 79–9545 is rescinded and FR Docs. 79–11120 and 79–11121 are issued as set out in this part.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 1a, 1b]

Rules Relating to Investigations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing revised regulations relating to investigations as a result of comments on its interim regulations which have been in effect since June 14, 1978 (43 FR 27174, June 23, 1978). The interim regulations have been adopted to state clearly the Commission's policy and procedures for investigations conducted under the statutes it administers. The revisions are proposed based on the comments received and experiences of the Commission under the interim regulations and also because of new powers granted the Commission under the Natural Gas Policy Act of 1978, the Public Utility Regulatory Policies Act and the Outer Continental Shelf Act Amendments of 1978.

DATE: Comment due date: April 25, 1979.

ADDRESSES: All filings should reference Docket No. RM78–15 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Charles J. Freidman, Office of Enforcement, Federal Energy Regulatory Commission, Room 3106, 941 North Capitol Street, NE., Washington, D.C. 20426, (202) 275–0303.

SUPPLEMENTARY INFORMATION:

A. Background

On June 14, 1978, the Commission issued Order No. 8, effective immediately, establishing a new Part 1b to its rules of practice and procedure entitled Rules Relating to Investigations. 43 FR 27174 (June 23, 1978) The Commission adopted these new regulations "to state clearly the Commission's policy and procedures for investigations conducted under the statutes it administers." It made these regulations effective immediately. In addition, the Commission afforded interested parties an opportunity to submit comments, suggestions or revisions with respect to these regulations. The Commission received comments from sixteen corporations and organizations.

Based upon a review of these comments and upon experience, the Commission proposes to amend the existing regulations concerning Commission investigations, especially in light of the new powers recently granted the Commission under the Natural Gas Policy Act of 1978, the Public Utility Regulatory Policies Act and the Outer Continental Shelf Lands Act Amendments of 1978. Thus, the Notice of Proposed Rulemaking would establish a new Part 1a, setting forth the Commission's Rules Relating to Investigations (hereinafter referred to as the "Rules"). In general, this proposal would reorganize the provisions contained in Part 1b, delete certain of the provisions and add new provisions to correct misapprehensions made manifest by certain of the comments received in response to Order No. 8 and to explain more fully and clearly the procedures to be followed in certain Commission investigations.

B. Summary of the Proposed Regulations

The Commission proposes to establish a new Part 1a of Title 18, Code of Federal Regulations, consisting of procedures to implement the Commission's investigative responsibilities under the statues administered by the Commission. This proposal applies to all investigations conducted by the Commission, the Commission's Office of Enforcement, and any other designated officers of the Commission. Section 1a.1 describes the scope and applicability of the Rules and the authority to conduct investigations. Sections 1a.2 through 1a.4 relate to requests for Commission investigations and describe the nature and conduct of preliminary investigations and formal investigations. Sections 1a.5 through 1a.9 relate to the issuance and service of and response to subpoenas, the applicability of certain of the Commission's information-gathering powers during investigations, sanctions for non-compliance with the Commission's compulsory process, the preparation and use of transcripts generated during Commission investigations, and the rights of witnesses and other persons during Commission investigations. Section 1a.10 controls appearance and practice before the Commission during investigations while § 1a.11 describes certain criminal penalties pertinent to investigations. Section 1a.12 describes the final stages of investigations, § 1a.13 provides for the non-public conduct of preliminary and formal investigations under Part 1a, and § 1a.14 describes requests for confidential treatment.

1. Scope and Commencement of Commission Investigations

Section 1a.1, which sets forth the general scope and applicability of the rules, represents a consolidation of §§ 1b.2 and 1b.3. This section makes clear that the Rules apply to investigations conducted by the Commission or its staff pursuant to section 307 of the Federal Power Act (16 U.S.C. 825f), as amended, section 14 of the Natural Gas Act (15 U.S.C. 717m), section 12 of the Interstate Commerce Act (49 U.S.C. 12), sections 501(a) and 508 of the Natural Gas Policy Act of 1978, Pub. L. No. 95–621, 92 Stat. 3350, or any other statute administered by the Commission. Section 1a.2, which sets forth the procedures regarding requests for investigations, replaces section 1b.8.

Several of the comments have suggested that Part 1b grants too much discretion to the Commission and its staff regarding the conduct of non-public investigations and fail to provide adequate procedural due process to persons being investigated by the Commission.

In many respects, the various objections to the investigatory rules exhibit a misconception of the role played by investigations within the regulatory context. It has long been settled that an administrative agency's "investigative function * * * is essentially the same as the grand jury's * * *" As the Supreme Court has said with reference to the investigatory power of the Federal Trade Commission:

> It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it too may take steps to inform itself as to whether there is probable violation of the law. *United States* v. *Morton Salt Co.*, 338 U.S. 632, 642–3 (1950).

It is also well settled that a non-adjudicative, fact-finding investigation should not be governed by the same procedural due process standards as

would apply to an adjudicative proceeding. The need to confer upon a person being investigated the full panoply of procedural due process rights is obviated when, as the Supreme Court observed in its discussion of the investigatory functions performed by the Civil Rights Commission and the Federal Trade Commission, "* * * any person investigated * * * will be accorded all the traditional judicial safeguards at a *subsequent adjudicative proceeding, * * * should some type of adjudicative proceeding subsequently be instituted.*" *Hannah* v. *Larche*, 363 U.S. 420, 446 (1960) (emphasis added).

A number of Commission enforcement actions will be preceded by Commission investigations, which will differ significantly in structure and purpose from the adversary proceedings which may follow. The purpose of a Commission investigation is to determine whether any persons or entities have violated laws, regulations, or orders administered or issued by the Commission, and, if so, what formal enforcement action should be taken. Although civil remedies, criminal penalties, and administrative sanctions can be imposed in Commission enforcement cases, a Commission investigation is a "non-adversary" inquiry or interrogation conducted to develop facts to enable the Commission to determine whether grounds exist for the institution of formal adversary proceedings. Thus, given the protections afforded in subsequent adversary proceedings, there is no need to transform investigations into adjudicative proceedings, which would "sterilize * * * investigations by burdening them with trial-like procedures," *Hannah* v. *Larche*, *supra*, 363 U.S. at 448.

2. Preliminary and Formal Investigations

Sections 1a.3 and 1a.4 describe the nature and conduct of preliminary investigations and of formal investigations. The proposed revision is intended to emphasize that the Commission's Office of Enforcement is principally responsible for the conduct of preliminary and formal investigations under this Part and to clarify the distinctions between (1) preliminary investigations, during which no compulsory process is issued, no testimony is compelled, and no oaths are administered, and (2) formal investigations, during which such events do take place pursuant to a Commission order of investigation.

Section 1a.3 represents a revision and consolidation of portions of §§ 1b.1, 1b.6, 1b.7, 1b.9 and 1b.11. Similarly, § 1a.4 represents a revision of portions of §§ 1b.1, 1b.5, 1b.7, 1b.9, 1b.10, 1b.11, and 1b.13.

a. *The preliminary investigation.* As provided in § 1a.3, the objective of the preliminary investigation is to gather facts and determine whether there is a likelihood that a violation has occurred, is occurring, or is about to occur. Since it is an informal procedure and the Commission's subpoena power is not invoked, the Commission, the Commission's Office of Enforcement or other staff members designated by the Commission request the voluntary cooperation of persons from whom relevant information may be obtained. Individuals may be requested to speak informally with staff members, statements may be taken, and documents requested. Evidentiary material compiled by the staff in the preliminary investigation remains non-public unless the Commission orders that it be made public. Section 1a.3 makes clear that no person may intervene in any preliminary investigation.

Various comments to Order No. 8 questioned the broad scope of Commission investigations and specifically of preliminary investigations. The Commission frequently receives information which suggests or alleges that applicable laws, regulations, or orders have been or are about to be violated. Such information may be received from state and federal authorities. It may be contained in periodic reports, newspaper articles, advertisements or other periodicals. Information may also come from an investigation into a related matter. The filing of a written statement is not a requirement, and a preliminary investigation may be pursued without it. It should also be emphasized that the Commission may conduct a threshold investigation to determine whether the questioned activities or facts come within the jurisdiction of the Commission.

The Commission is charged with enforcing certain laws and regulations and therefore may take some action when there is an indication of a prohibited activity. On the other hand, because the Commission has limited resources, every lead, even when amplified by the information obtained in a preliminary investigation, cannot or need not be followed up with a full scale formal investigation. The Commission has a number of alternatives after completing a preliminary investigation, including, but not limited to, the following: (1) A formal investigation, (2) a referral to state or local authorities, (3) an informal disposition of the matter by obtaining voluntary compliance, or (4) a further investigation and report to the Commission by independent accountants, legal counsel and boards of directors. Of course, a preliminary investigation may also lead to a determination that no further action is necessary.

b. *The formal investigation.* As proposed, the rules would be amended to describe more fully (1) the initiation of formal investigations, (2) the Commission's order of investigation, (3) the oath administered to witnesses, (4) participation in formal investigations, (5) the non-public nature of most formal investigations, and (6) procedures relating to public formal investigations.

If, after a preliminary investigation, it appears to the staff that there is a likelihood of a violation or that subpoena power is needed to ascertain more facts, § 1a.4 provides for the conduct of formal investigations by the Commission, either by the Commission itself or by one or more members of the Commission or its staff designated by the Commission to conduct a formal investigation. Section 1a.4 specifically provides for the staff to seek authorization from the Commission to institute a formal investigation and utilize subpoena power. If the Commission concurs with the staff recommendation, a formal order of investigation is issued which, among other things: (1) Delineates the scope of the investigation, including the statutes, rules and regulations which may have been violated and the possible violative activities that the staff is authorized to investigate, (2) names of subjects of the investigation, and (3) designates the members of the Commission or its staff authorized by the Commission to issue subpoenas and interrogatories and to question persons under oath. Any person named in the formal order as well as persons who are not named in such formal order may be subpoenaed to testify or to produce their own records as long as such testimony or records are relevant to the investigation. Finally, § 1a.4 makes it clear that no person may intervene in any formal investigation.

In response to various comments, the Commission proposes to replace former § 1b.16(d) of Order No. 8 with § 1a.4(f) of the rules. This revised section provides that the Commission may order a formal investigation to be conducted in public. Although the rules provide that the Commission shall issue notice of the institution of such public formal investigation and, where appropriate, of

the time and place of the taking of testimony of witnesses during such investigation, § 1a.4(c) further provides the Commission with flexibility to adopt special or additional procedures in connection with such public formal investigation.

Some of the comments to Order No. 8 suggested that the Commission adopt the practice of notifying a person who is the subject of an investigation and against whom no further action is contemplated that the staff has concluded its investigation of the matters referred to in the formal order of investigation and determined that it will not recommend the commencement of an enforcement action against such person. Although this suggestion may be superficially appealing, the Commission does not believe that it should adopt a rule or procedure under which the Commission in each instance will inform parties when its investigation has been concluded. We take this position because it is often difficult to determine whether an investigation has been concluded or merely suspended and because an investigation believed to have been concluded may be reactivated as a result of unforeseen developments. Under such circumstances, advice that an investigation has been concluded could be misleading. Thus, the proposed changes contain no formal requirements that the Commission notify every subject of a non-public formal investigation that it has been terminated.

The Commission has provided, however, pursuant to § 1a.4(f), that the staff may in cases where such action appears appropriate advise persons under inquiry in a public formal investigation that the Commission has terminated such investigation and that the staff will not at that time recommend the commencement of an enforcement proceeding against a particular person or entity. The Commission would make clear, however, that such advice, if given, must in no way be construed as indicating that such person has been exonerated or that no action may ultimately result from the staff's investigation of the particular matter. The Commission further stresses that if persons under inquiry are advised of the termination of a public formal investigation, they should be aware that the attempted use of such communications as a purported defense in any civil or criminal action that might subsequently be brought against that party would be inappropriate and improper.

c. *Issuance and service of subpoenas, response to subpoenas, and witness fees in formal investigations.* Section 1a.5 sets forth the procedure for issuing subpoenas, the service of subpoenas, the payment of witness fees and the manner of response to subpoenas. The proposal makes clear that a party subpoenaed during an investigation may assert constitutional and federal common law privileges. Thus, for example, the Fifth Amendment privilege against compulsory self-incrimination may be asserted. The witness cannot, however, merely refuse to appear; he or she must appear on the return date and assert a privilege. As in any other judicial or administrative forum, the subpoena requires a personal appearance and cannot be satisfied by appearance of counsel.

In response to various comments to Order No. 8, the Commission proposes to issue Rules relating to subpoenas (1) to provide that a subpoena may only be served upon a person's attorney when such attorney represents such person in the particular pending investigation, (2) to provide for the payment of witness fees and mileage expenses, and (3) to clarify the procedures to be followed if any subpoenaed documents are withheld for any reason, including a claim of privilege.

d. *Exercise of other information-gathering powers during investigations.* Section 1a.6 describes the Commission's authority under section 10(a) of the Natural Gas Act, U.S.C. 717i(a), section 304(a) of the Federal Power Act, 16 U.S.C. 825c(a), and section 20(1) of the Interstate Commerce Act, 49 U.S.C., 101(l), to require by order special reports, to prescribe the manner and form in which such reports shall be made, and to require from jurisdictional companies specific answers to all questions upon which the Commission may need information. Pursuant to § 1a.6. any officer authorized by the Commission to conduct a formal investigation may, by letter or other written mechanism, require natural-gas companies, hydroelectric licensees, oil pipeline companies and public utilities to answer under oath specific questions promulgated by such officer in a special report to be filed with the Commission. Such reports shall be made under oath, unless the Commission otherwise specifies.

Pursuant to section 508(b) of the Natural Gas Policy Act of 1978, the Commission is also empowered, among other things, to require by general or special order any person who is engaged in the production, processing, refining, transportation by pipeline, sale, or distribution (at other than the retail level) of energy recourses to submit answers in writing to interrogatories and to request for reports or for other information within a reasonable time period and under oath or otherwise. Section 508(b) also gives the Commission authority to conduct physical inspections at energy facilities and business premises, to inventory and sample any stock of energy resource therein, and to examine and copy any books, records, papers or other documents relating to any such energy information and to question persons as the Commission or its designated officers may deem necessary, whether under oath or otherwise. Section 1a.6 (c) and (d) would allow the Commission or any of its designated officers during formal investigations to obtain information through physical inspections of energy facilities and business premises and through other requests.

e. *Sanctions for non-compliance with compulsory process and orders in formal investigations.* Section 1a.7 clarifies that the Commission may seek the aid of the appropriate United States District Court or of the Attorney General in order to obtain compliance with the Commission's compulsory process or orders issued during formal investigations. Section 1a.7 would replace § 1b.15 of Order No. 8.

f. *Transcripts.* Section 1a.8, which would replace section 1b.12, guarantees that any person who has provided a statement or testimony in an investigation under this Part shall be entitled to procure a copy of the official transcript of such statement or testimony, except that in certain limited circumstances, such person may be limited to an inspection of such transcript. This provision is wholly consonant with the Administrative Procedure Act, which provides that "in a non-public investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. § 555(c).

Several of the comments to Order No. 8 recommended that the Commission provide witnesses with an absolute right to obtain a copy of their transcripts and to provide their own reporters in Commission investigations. The Commission believes, however, that it may be necessary in certain circumstances to deny a witness a copy of the transcript of his or her statement or testimony. As one court has noted, "non-public investigatory proceedings * * * 'might be thwarted in certain cases * * * if witnesses were given a copy of their transcript, [since]

suspected violators would be in a better position to tailor their own testimony to that of the previous testimony, and to threaten witnesses about to testify with economic or other reprisals.' " *LaMorte* v. *Mansfield*, 438 F.2d 448, 451 (2nd Cir. 1971) (citation omitted). The commission also prefers the procedure whereby the officer or officers conducting the investigation designates one reporter to take the verbatim transcript of this nonadversary proceeding. Regarding the comments to Order No. 8 seeking clarification as to when requests for transcripts properly may be made, such requests would be appropriate before, during or after the examination of any witness, in accordance with the provisions of § 1a.8.

3. Rights and Obligations of Witnesses and Other Persons During Preliminary and Formal Investigations

Section 1a.9(a), which includes matters covered by section 1b.16 of Order No 8, provides that a subpoenaed person has an absolute right to inspect the formal order of investigation, and the person will ordinarily be provided a copy of the formal order unless the disclosure is inconsistent with the privacy of the persons or entities under investigation or the unimpeded conduct of the investigation. The Commission would not adopt the suggestion that the formal order of investigation be automatically "served" on "parties" to the investigation as Commission investigations are not adversary proceedings.

Various comments have suggested that witnesses in preliminary investigations should also be afforded the right to counsel. The Commission agrees. Section 1a.9(b) would grant a witness the right to be accompanied, represented and advised by legal counsel, whether such witness' appearance is pursuant to subpoena or voluntary. Section 1a.9(b) would require no special qualifications, examinations, or admission procedures for practice before the Commission during Commission investigations. An attorney may practice before the Commission if he or she is admitted to practice before the U.S. Supreme Court, the Highest court of any state or territory, or the courts of the District of Columbia. Section 1a.9(b) sets forth the permissible conduct of counsel at a witness' examination as (1) advising the witness during any examination, and (2) making summary notes during the examination solely for use of the witness and witness' counsel. Section 1a.9(b) would also permit the witness at the conclusion of an examination to make a statement on the record to clarify any previous answer or otherwise. Restricting the role of counsel in Commission investigations is intended to ensure that the officer in charge of the investigation will conduct the examination in an unimpeded manner and that the examination will flow freely without interruption and unwarranted objection.

Section 1a.9 also describes other rights of witnesses, including the right against self-incrimination, the right to submit statements and other information, as well as provisions relating to immunity and sequestration. Although many of the comments received by the Commission to Order No. 8 recommend elimination of the latter provision, § 1a.9(e), which provides that witnesses may be sequestered and prohibited from being present during the examination of other witnesses, is necessary to protect the integrity of the investigative fact-finding process since "witnesses may, and often do, shape their testimony to match that given by other witnesses within their hearing. To prevent such matching of testimony is the prime purpose of putting witnesses under the [sequestration] rule." *Charles* v. *United States*, 215 F.2d 825, 827 (9th Cir. 1954).

Finally, § 1a.9(d) provides persons involved in a Commission investigation with the right to submit any documents, statements of fact, memoranda of law, or other information setting forth his or her interest and position regarding the subject matter of the investigation.

4. Appearance and Practice Before the Commission During Investigations

The parameters of appearances and practice before the Commission during investigations, which were formerly set forth in §§ 1b.16 and 1b.17 of Order 8, would be in § 1a.10, including procedures to be followed in situations of multiple representation by counsel. Although various comments to Order No. 8 recommended that the Commission delete the rule permitting the suspension or disbarment of an attorney from practice before the Commission, the Commission believes strongly that the integrity of the regulatory process is best maintained and preserved by continuing to ensure that all persons appearing or practicing before the Commission during investigations possess the requisite qualification to represent others and do not engage in unethical or improper professional conduct.

Many comments to Order No. 8 also opposed the concept embodied in § 1a.10, whereby an attorney may be prohibited from being present during the testimony of any other witness when such presence will obstruct or impede an investigation. This regulation, like § 1a.9(e), is designed to prevent the "matching of testimony" by witnesses. It has been recognized that "the purpose of sequestration could be defeated by an attorney advising witnesses as to the testimony which has been given by others." *Securities and Exchange Commission* v. *Higashi*, 359 F.2d 550, 552 (9th Cir. 1966). It should be emphasized that this power is intended to be exercised sparingly, and only in those instances where such multiple representation obstructs or may tend to obstruct the investigation.

Several comments to Order No. 8 questioned the relationship between the investigatory regulations and the Commission's regulation concerning *ex parte* communications, i.e. § 1.4(d). In revising § 1b.17 to make clear that only the provisions of § 1.4(b) apply to Commission investigations, the Commission seeks to emphasize that the *ex parte* provisions do not apply to the conduct of Commission investigations, which are not "on-the-record proceedings" covered by § 1.4(d).

5. Final Stages of Investigations

In response to various comments, the Commission would expand Part 1b to include procedures and policy concerning submissions, consent agreements, and the various enforcement alternatives available to the Commission where it appears, as a result of its fact-finding investigations, that there has been a violation of any act, rule, regulation or order. Section 1a.12 therefore represents a revision of § 1b.19.

a. *Notification prior to enforcement actions; submissions.* One criticism of Part 1b of the Commission's rules has been that the Commission does not afford persons under investigation an opportunity to present their positions to the Commission before proceedings are brought against them or the matter is referred criminally. We believe it would seriously undermine the Commission's enforcement efforts to require as a matter of right the pre-notification of all persons who may be named in a Commission action or who may be proceeded against civilly or criminally of the possibility that such action might occur and to afford an opportunity to be heard in each instance before the Commission. The only actions that the Commission can initiate are those which already include all the appropriate due process safeguards. Moreover, it is only after there has been notice and

opportunity for hearing that administrative action can be taken against any party. Thus, to add an additional procedural layer, namely, a requirement for argument or hearing on the question of whether or not to institute a proceeding, would, in the Commission's view, unduly delay the disposition of matters and would seriously undermine the Commission's enforcement program. Moreover, affording this right to persons under investigation without affording the same right to other interested persons having adverse interests, such as consumers, is unsatisfactory and inequitable. There can be no fairer procedure than having charges aired in a duly constituted forum where all parties are afforded their full legal rights. Furthermore, such delays would provide additional time for persons to dispose of assets, change contractual relationships, and carry on improper activities. It would also provide persons an opportunity to evade service, destroy records, and compromise or intimidate government witnesses. Finally, it is impractical and premature to provide for argument to resolve issues before issues have been joined by the commencement of civil proceedings in federal district court or administrative proceedings before the Commission.

Although the subject of an investigation does not have an absolute right to present his, her, or its case to the Commission, § 1a.12(a) provides for the officer or officers conducting the investigation to transmit to the Commission a subject's written statement together with any recommendation of such officer or officers. The Commission would emphasize that while it permits persons involved in an investigation to present a statement to it setting forth their interest and position, the Commission will not delay taking action which it has cause to believe is required pending the receipt of such a submission and, accordingly, it will be necessary if the material is to be considered that it be timely submitted. In determining what course of action to pursue, persons may find it helpful to discuss the matter with the officer or officers conducting the investigation. Section 1a.12(a) provides that the officers designated by the Commission to conduct an investigation may in their discretion advise prospective defendants or respondents of the general nature of the Commission's investigation, including such indicated violations as may pertain to them, and the amount of time that may be available for preparing a submission. The Commission's staff should have discretion in this regard to protect the public interest and to avoid possible activities which would obstruct or delay necessary enforcement action.

Where a disagreement exists between the Commission's staff and a prospective defendant or respondent as to factual matters, this can be resolved in an orderly manner through litigation. Moreover, the Commission will not adjudicate issues of fact before actions have been commenced and evidence has been placed in the record. In addition, where a proposed administrative proceeding is involved, the Commission wishes to avoid the possible danger of apparent prejudice involved in considering conflicting contentions, especially as to factual matters, before the commencement of appropriate hearings before the Commission. Consequently, submissions by prospective defendants or respondents will normally prove most useful in connection with policy, or on occasion, legal questions, together with considerations relevant to a particular defendant or respondent which might not otherwise be brought clearly to the Commission's attention. Section 1a.12(a) provides that submissions by interested persons should be forwarded to the members of the Commission or its staff conducting or authorized to conduct the investigation, and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement action regarding any particular person is sent to the Commission by the officers conducting the investigation, any submissions by such persons would be presented to the Commission without alteration or amendment together with the recommendation of the officers conducting the investigation.

b. *Enforcement alternatives and Commission considerations.* At the conclusion of a Commission investigation, a number of alternatives are open to the Commission. In some cases, no further action may be taken. The matter may be referred to state or local authorities. The Commission may bring an injunctive action in federal district court seeking injunctive relief, may institute administrative proceedings, or may make a referral to the Attorney General for criminal prosecution. The staff may, of course, conclude that violations have not occurred or are not about to occur. Moreover, even though the staff has reason to believe that violations have occurred, it may recommend no further action. In determining whether additional action is warranted in cases where a violation has occurred, the Commission would consider a number of factors. Because flexibility and responsiveness to changing conditions are needed, it is impossible to enumerate all factors considered by the Commission. However, at least the following may be considered: the character, nature and scope of the alleged violations; the need for immediate action; whether the alleged violations involve any new theory or interpretation of law and the suitability of the matter to serve as a vehicle for doing so; the availability of any suitable remedies; the number of consumers and amount of harm to such consumers; the probability of a successful conclusion of the action and the type of relief or sanctions which could be obtained; whether the subject has taken curative steps to insure future compliance; whether the subject has made restitution to injured persons; the practices of a subject and the importance of alerting the industry and the public to the fact that the Commission has taken action with respect to the practices; the age of the violation; the difficulty of fashioning a sanction appropriate to the violation involved; and, generally, the impact of the case on the Commission's compliance and enforcement programs.

At the stage where it authorizes enforcement actions, the Commission would not attempt to determine factual issues or adjudicate liability. Its function is merely to determine whether a sufficient basis has been shown for alleging a violation of law. Even if it appears that a violation has occurred, however, the Commission has the discretion to determine whether or not a formal enforcement action should be commenced and the form the enforcement action should take.

c. *Settlement of investigative matters before the Commission.* Another alternative to formal action, whether civil injunctive action or administrative proceeding, is for prospective defendants or respondents to settle such proceedings as a result of negotiations. Section 1a.12(c) proposes the Commission's policy on consent agreements. This policy provides that the Commission will not permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint for injunctive relief or order instituting administrative proceedings. The purpose of such a policy is to avoid creating or permitting to be created at the time a decree is being entered or a sanction imposed any impression that the conduct alleged did not, in fact, occur.

6. Non-public Nature of Commission Investigations

Various comments to Order No. 8 questioned the need for non-public investigations. The Commission believes that § 1a.13, which would revise § 1b.9 of Order No. 8, is sufficient to protect the rights and privacy of persons involved in investigations.

The Rules would give the Commission authority to conduct either public or non-public investigations. It is anticipated, however, that most of the Commission's investigations will be conducted in a non-public manner and that the Commission will generally not exercise its discretionary authority to publish the fact that it is conducting a particular non-public investigation or the results of such investigation. Ordinarily, if formal enforcement actions follow an investigation, the action will move to a public forum, i.e., civil injunctive action in a federal district court, administrative proceedings before a Commission Administrative Law Judge, or criminal prosecution by the Attorney General. Administrative proceedings generally are public, although the Commission may hold non-public meetings. However, the Commission may announce the existence of an investigation to assure consumers, the energy industry, and the public of its concern in a particular area. The Commission may also announce the existence of an investigation in circumstances where the facts underlying the Commission investigation are widely known to the public through previously public administrative hearings.[1]

There have been suggestions in the comments to Order No. 8 that the Commission's staff might breach the Commission's usual practice of maintaining the non-public nature of investigations. The Commission disagrees with such an analysis of its staff's behavior during investigations. The Commission recognizes that an investigation is not a matter to be taken lightly and that repercussions may occur from the mere fact of an investigation. Although such consequences can sometimes be serious and should be minimized as much as possible, they must not be permitted to deter the Commission in the discharge of its enforcement activities. The multiple steps involved in issuing an investigative order have thus been developed because of the potential impact of the commencement of a formal investigation. Thus, investigations will generally be conducted in a non-public manner to ensure that the mere initiation of investigations by the Commission will not be interpreted to mean that the Commission has concluded that a violation of law has occurred.

7. Requests for Confidential Treatment of Information

Regarding requests for confidential treatment of information furnished to the Commission during investigations and the adequacy of the procedures for handling requests for confidential treatment, the Commission believes that § 1a.14, which revises § 1b.20 of Order No. 8, would be adequate to cover Commission investigations at this time.

8. Providing Adequate Due Process Safeguards

Various comments have alleged that Order No. 8 "give[s] rise to an ominous potential for abuse" and provides for "the abolition of basic procedural due process." We believe that such fears are unfounded and therefore the Rules are completely consistent with the requirements of the Administrative Procedure Act and of procedural due process as applied to Commission investigations.

The Commission has always been careful to assure the utmost protection of the individuals' rights, taking into account both substantive and procedural due process standards. The rules as proposed reflect the Commission's traditional and strict adherence to all procedural due process requirements. In this regard, persons summoned to appear in an investigation, are, among other things, advised of their right to counsel and that they need not give any evidence that may be incriminating. Such warnings go beyond constitutional requirements, which only provide the opportunity to consult with counsel where the witness is "in custody." Indeed, the rights afforded under Commission practice go beyond those afforded by most other government agencies. For example, the Commission's Rules would provide the right to counsel in informal as well as formal investigations, although Section 555(b) of the Administrative Procedure Act only requires the right to counsel where a witness is compelled to appear in person before an administrative agency. Further, witnesses are afforded the absolute right to inspect a copy of their investigative transcripts. Prior to beginning his or her testimony, a witness is also afforded the opportunity to read the Commission's order of investigation which is issued before a formal investigation is undertaken. The order of investigation specifically provides the witness information concerning the scope and nature of the investigation which far exceeds constitutional requirements and the practices of most other government agencies. This is of substantial assistance to the witness and his or her counsel in enabling them to make informed decisions with respect to furnishing records and giving testimony. The practices in this area have been judicially upheld as meeting all required standards.[2] Moreover, the use of an official reporter to take verbatim transcripts assures that there can be an effective review of the exact questions asked, the answers given, and counsel's statements and objections.

It should further be noted that the Commission would be kept fully informed and direct authorization by the Commission is required at every major step of the investigatory process. The authority to institute administrative proceedings or bring civil injunctive actions or refer cases for criminal prosecution is exclusively the prerogative of the Commission. There has been no delegation of these powers, and the Commission only acts after it has reviewed and considered comprehensive staff reports.

C. Written Comment Procedures

The Commission invites interested persons to submit written comments, with data, views and other information concerning all facets of this proposal. Interested persons may participate by submitting comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 25, 1979. Each person submitting a comment should include his or her name and address, identify the notice (Docket No. RM78–15), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of a person to whom communications concerning the regulations may be addressed. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

[1] For example, this has recently occurred in the matters of *Tenneco Inc., et al.* Docket No. IN78–1, and *Florida Gas Transmission Company*, Docket No. IN78–2.

[2] *See Hannah* v. *Larche*, 363 U.S. 420 (1950) and *United States* v. *Dosek*, 405 F. 2d 405 (8th Cir. 1968).

(2) Examine and copy any books, records, papers or other documents relating to any such energy information; and

(3) As they deem necessary, question persons under oath or otherwise.

(d) *Other requests for information during formal investigations.* During formal investigations, the Commission or any of its designated officers may require any person who is engaged in the production, refining, transportation by pipeline, sale, or distribution (at other than the retail level) of energy resources to submit, under oath or otherwise, answers in writing to interrogatories and to requests for reports or for other information. For purposes of this subsection, "report" means any report the Commission may order under section 508(b) of the Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350.

§ 1a.7 Sanctions for noncompliance with compulsory process and orders.

In any case of failure to comply with the compulsory process and orders issued by the Commission or any member of the Commission or its staff during a formal investigation, the Commission may invoke the aid of the appropriate United States District Court or of the Attorney General in seeking enforcement, penalties or criminal sanctions.

§ 1a.8 Transcripts.

Transcripts taken in the course of any investigation under this part shall be recorded solely by an official reporter or by any other person or means authorized by the officer conducting the investigation for the Commission. A person who has provided a statement or testimony in an investigation under this part shall be entitled, upon written request and upon payment of appropriate fees pursuant to § 3.8 of this chapter, to procure a copy of the official transcript of such statement or testimony, except that a witness in a non-public formal investigation may, for good cause, be limited to an inspection only, either in person or by his or her counsel, of the official transcript of such testimony. § 1.21(b) of this chapter is not applicable to investigations under this part.

§ 1a.9 Rights of witnesses and other persons during investigations.

(a) *Access to orders of investigation.* Any person upon whom a subpoena or other compulsory process has been served under this part shall, upon his or her request, be permitted to examine a copy of the Commission's order of investigation. However, a copy of the Commission's order of investigation shall not be furnished for his or her retention unless such retention would be consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

(b) *Right to counsel.* Subject to the provisions of § 1a.10, any person who appears in person during any investigation may be accompanied, represented and advised only by an attorney who is admitted to practice before the Supreme Court of the United States, the highest court of any State or Territory of the United States or of the District of Columbia, or the District Court of the United States for the District of Columbia.

(1) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have such an attorney present with such person during any formal or preliminary investigation and to have an attorney advise such person during any examination conducted during such investigation. At the conclusion of any such examination, the witness may make a statement on the record to clarify any previous answers or for any other purpose. To aid counsel in protecting the interests of his or her client with respect to any such examination, counsel may take summary notes during the examination.

(2) With due regard for the rights of a witness, the Commission may exclude a particular attorney from further participation in any investigation in which the Commission has found the attorney to have engaged in dilatory, obstructionist or contumacious conduct. The officer conducting an investigation may report to the Commission any instances of apparently dilatory, obstructionist or contumacious conduct on the part of an attorney during the course of an investigation. The Commission may then take such action as the circumstances warrant including (i) exclusin of the attorney from further participation in the particular investigation or (ii) in accordance with § 1.4(b)(1) of this chapter or § 1100.11 of the Interstate Commerce Act (49 CFR 1100.11), temporary or permanent disqualification from appearance or practice before the Commission.

(c) *Right against self-incrimination; immunity*—(1) *Self-incrimination.* Persons refusing to provide statements, testimony, or documents on the basis of the privilege against self-incrimination in accordance with the Fifth Amendment of the United States Consitution must assert such privilege personally.

(2) *Immunity.* In accordance with 18 U.S.C. 6001, 6002 and 6004, if the Commission believes that the testimony or other information sought to be obtained from any individual may be necessary to the public interest and that individual has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the Commission, with the approval of the Attorney General, may issue an order requiring the individual to give testimony or provide other information which he or she previously refused to give on the basis of his or her privilege against self-incrimination. Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to testify or provide other information in an investigation under this part, and an officer conducting the investigation communicates to the witness an order issued by the Commission requiring the witness to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination. However, no testimony or other information compelled under such order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with such order.

(d) *Right to submit statement and other information.* In any investigation under this part, persons may on their own initiative and at any time submit to the officer conducting the investigation any documents, written statements of fact, memoranda of law, or other written information setting forth their interest and position regarding the subject matter of the investigation.

(e) *Sequestration of witnesses.* All witnesses and potential witnesses shall be sequestered and prohibited from being present during the examination of any other witness unless otherwise permitted by the Commission or by the members of the Commission or its staff conducting the preliminary investigation or formal investigation.

§ 1a.10 Appearance and practice before the Commission during investigations.

(a) *Suspension, disbarment or other disciplinary action.* The provisions of § 1.4(b) of this chapter and of § 1100.11 of the Interstate Commerce Commission's regulations (49 CFR 1100.11) are hereby made applicable to

all investigations conducted under this part.

(b) *Multiple representation by counsel.* (1) Any counsel representing more than one person in an investigation under this part shall inform the officer conducting the investigation and each client who is a witness of any possible conflict of interest in representing such client. Any counsel appearing with a witness giving testimony on the record shall disclose on the record all the persons that counsel represents in the investigation.

(2) When a reasonable basis exists to believe that an investigation under this part may be obstructed or impeded, directly or indirectly, by an attorney's representation of more than one witness during the course of an investigation, the officer conducting the investigation may prohibit that attorney from being present during the testimony of any other witness in the investigation. To the extent practicable, consistent with the integrity of the investigation, the attorney and the witness will be advised of the reason for such sequestration.

§ 1a.11 Criminal penalties for perjury, subornation of perjury, and false, fictitious, or fraudulent statements or entries.

Any person who willfully states or subscribes under oath any material matter which he or she does not believe to be true or who procures another to commit any perjury during the course of an investigation conducted under this part is subject to criminal penalties for perjury or subornation of perjury, as set forth in 18 U.S.C. 1621 and 1622, respectively. Any person who during the course of any investigation conducted under this part knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry is subject to criminal penalties, as set forth in 18 U.S.C. 1001.

§ 1a.12 Final stages of investigations.

(a) *Submissions.* (1) The Commission or the officers designated to conduct an investigation, as appropriate, may advise any person involved in the investigation that the Commission is considering commencement of an enforcement action as described in paragraph (b) of this section or that a recommendation for such an enforcement action may be made to the Commission. The Commission or the officers designated to conduct an investigation, as appropriate, may advise any person involved in the investigation of the general nature of the recommendation, including the indicated violations as they pertain to such person and the amount of time available for preparing a written submission.

(2) Any person who has been advised of a potential enforcement action under paragraph (a)(1) of this section may prepare a written statement, with supporting documentation, which sets forth defenses, justifications, excuses, exculpatory material regarding such person's own actions, of inculpatory material regarding the activities of other persons. The submission shall be clearly referenced to the specific investigation to which it relates and shall be submitted to the Commission or the officers designated to conduct the investigation, as appropriate.

(3) If the Commission is conducting the investigation, the Commission shall consider any submission timely made under subparagraph (2) of this paragraph. If the Commission has designated an officer or officers to conduct the investigation, and if such officer or officers determine regarding any particular persons to present to the Commission a recommendation for the commencement of an enforcement action as described in paragraph (b) of this section, then the Commission shall consider any submission timely made by such persons under subparagraph (2) of this paragraph together with the recommendation of the officers conducting the investigation concerning such persons.

(b) *Enforcement alternatives.* After an investigation, the Commission may take one or more of the following actions:

(1) Institution of administrative proceedings;

(2) Institution of civil actions in the courts;

(3) Referral to the Attorney General for criminal prosecution;

(4) Referral to any other governmental authorities; or

(5) Any other appropriate action.

(c) *Policy on consent agreements.* In connection with any decree or sanction to be entered or imposed in any civil lawsuit or administrative proceeding of an accusatory nature brought by the Commission, the Commission will not accept a defendant or respondent to consent to a judgment or order that imposes a sanction while denying allegations contained in the complaint for injunctive relief or the order for administrative proceedings.

§ 1a.13 Nonpublic nature of preliminary and formal investigations.

(a) The existence of any investigation conducted under this part shall not be a matter of public record and any information or documents obtained during the course of any investigation conducted under this part shall not be made publicly available except to the extent that:

(1) The Commission directs or authorizes the public disclosure of the investigation or information;

(2) The information or documents are made a matter of public record; or

(3) Disclosure is required by law.

(b) Notwithstanding paragraph (a) of this section, the Commission and its staff may use any information or documents obtained during the course of an investigation in any manner designed to further the investigation.

(c) A request for confidential treatment of information submitted to the Commission shall not prevent disclosure of information or documents when disclosure is in furtherance of the investigation, of any subsequent enforcement action arising out of the investigation or of any subsequent law enforcement proceeding.

§ 1a.14 Requests for confidential treatment of information.

Any person compelled to produce documents in an investigation may claim that some or all of the information contained in a particular document(s) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure. In such case, the person making such claim shall, at the time said person produces the document to the officer conducting the investigation, also produce a second copy of the document from which the information for which the person claims confidential treatment has been deleted. Said person shall indicate on the original document that a request for confidential treatment is being made for some or all of the information in the document and shall file a statement specifying the statutory justification for non-disclosure of the information for which confidential treatment is claimed. Sufficient information must be furnished for the officer conducting the investigation, or other appropriate official, to make an informed decision on the request for confidential treatment. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial

information, the person shall include a statement specifying why the information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the officer conducting the investigation may assume that there is no objection to public disclosure of the document in its entirety. The Commission retains the right to make the determination with regard to any claim of confidentiality. Notice of the decision by the officer conducting the investigation or other appropriate official to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality no less than five days before its public disclosure.

[Docket No. RM78-15]
[FR Doc. 79-11120 Filed 4-9-79; 8:45 am]
BILLING CODE 6450-01-M

Note.—At 44 FR 18517, March 28, 1979, FR Doc. 79-9545 bearing Docket No. RM 78-15, Rules Relating to Investigations, appeared under the heading Department of Energy, Federal Energy Regulatory Commission. The test incorrectly consisted of portions of two separate rulemaking dockets. FR Doc. 79-9545 is rescinded and FR Docs 79-11120 and 79-11121 are issued as set out in this part.

[18 CFR Part 141]

Form 423; Collection and Dissemination Procedures; Order Terminating Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Terminating Rulemaking.

SUMMARY: Several electric utilities petitioned to amend the collection and dissemination procedures for Form 423 data established by 18 CFR 141.61. Form 423 is designed to obtain monthly data on the cost and quality of fuels received at steam-electric generating plants. After considering written comments and oral presentations on the issues from the public and a Staff analysis, the Commission denied the petition and terminated the rulemaking.

EFFECTIVE DATE: April 9, 1979.

FOR FURTHER INFORMATION CONTACT: Bernard B. Chew, Office of Electric Power Regulatory, Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-4770.

SUPPLEMENTARY INFORMATION:

Part I

This Order denies the Petition of Certain Electric Utilities for Amendment of Commission's Regualtions with Respect to Form 423, filed October 15, 1976,[1] to amend the collection and dissemination procedures established from Form 423. The Petitioners offered two alternative proposals:[2] Prosposal A would modify the information to be reported on Form 423 by:

1. "Requiring that the average cost of fossil fuels delivered to a plant be reported instead of the actual price of each delivery," and

2. "Eliminating the reporting of information with respect to the identiy of the fuel supplier and the date of contract expiration."

Proposal B would allow for the collection of the same information presently reported, but limit the distribution of Form 423 by:

1. Treating information furnished as confidential and restricting availability of the forms "to the staff members of (the) Commission and to other federal agencies upon written request of the head of the agency," and

2. Making public only a summary of information on each form "reporting the average cost of fuel delivered to a plant instead of the actual price of each delivery and eliminating information with respect to the fuel supplier and the date of contract expiration."

The Petitioners contended that such restrictions were necessary because the existing Form 423 reporting system placed "* * * the reporting utilities at a decided disadvantage in negotiations for available fuel supplies," and may have "set the stage for anti-competitve behavior."[3]

Background

This is not the first time that the Commission has reviewed the issues involved in the collection and dissemination of Form 423 data. Many of the same contentions were made when the original Form 423 reporting system was initiated in Docket No. R-432 [4] and again when the Form was altered to collect additional information in Docket No. R-432(a).[5] At that time, the Commission decided that the benefits of such a reporting system clearly outweighed its potential harm. The Commission's reasoning and procedures in Docket No. R-432 were upheld. *Alabama Power Company* v. *FPC*, 511 F.2d 383 (D.C. Cir. 1974).

The Commission decided to examine the issues once again in this proceeding because the Petitioners declared that Form 423 reporting had, in fact, caused injury to utilities and their customers. Petitioners also contended that since 1973, in a series of cases argued under the Freedom of Information Act,[6] the courts had altered the evidentiary standards needed to show that the reporting of information should be restricted to avoid undue injury to the respondent. Since the Petitioners' allegations were related to antitrust matters the Commission paid particular attention, as suggested by the Court in *Alabama Power*, to the comments of the Federal Trade Commission (FTC) and the Justice Department (Justice), the agencies having principal responsibility for interpreting the Nation's antitrust policies.

Prior to issuance of the Notice of Proposed Rulemaking, FTC and Justice both recommended that this Commission limit dissemination of Form 423 information in order to lessen the likelihood of anticompetitive effects. The initial views of the FTC were presented by letter dated May 27, 1977. In this letter, reproduced as APPENDIX C to the Notice of Proposed Rulemaking, the Chairman of the FTC observed that "prompt disclosure of Form 423 data creates the risk of anticompetitive behavior." He went on to suggest that this Commission adopt a variant of Petitioners' Proposal B: all Form 423

[1] This proceeding was commenced before the 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 context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC. The twelve original petitioners were: New England Power Co., Alabama Power Co., Carolina Power & Light Co., Consumers Power Co., Duke Power Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., Rochester Gas & Electric Corp., South Carolina Electric & Gas Co., Utah Power & Light Co., and Wisconsin Electric Power Co. Four additional utilities who subsequently joined in the petition are: Georgia Power Co., Gulf Power Co., Indianapolis Power & Light Co., Mississippi Power Co.

[2] Petition, pp. 1 and 2.

[3] Petition, pp. 5 and 12.

[4] Order No. 453 issued June 7, 1972, in Docket No. R-432, 47 FPC 1469, 37 FR 11860. See also Order Denying Application for Rehearing issued August 3, 1972, 48 FPC 217 (National Coal Association); Order Denying Petition for Amendment of the Commission's Regulations with Respect to Form No. 423 issued March 2, 1973, 49 FPC 588 (group of utilities); and Order Denying Rehearing, issued April 16, 1973, 49 FPC 1010 (same group of utilities). The latest Order issued was appealed, resulting in the *Alabama Power* decision, infra.

[5] Order No. 512 issued September 12, 1974, 52 FPC 745, 39 FR 34030. See also Order Denying Motion to Stay Reporting with Respect to Coal in Accordance with Instruction (6) on New Form 423 issued December 13, 1974, 52 FPC 1803 (Ohio Edison Company).

[6] *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974); *Continental Oil Company* v. *FPC*, 519 F.2d 31 (5th Cir. 1975), cert. denied sub. nom. *Superior Oil Company* v. *FPC*, 425 U.S. 971 (1976); *Pennzoil Co.* v. *FPC*, 534 F.2d 627 (5th Cir. 1976); *Union Oil Co. of California* v. *FPC*, 542 F.2d 1036 (9th Cir. 1976); *National Parks and Conservation Association* v. *Kleppe*, 547 F.2d 673 (D.C. Cir. 1976). See also *Superior Oil Company* v. *FERC*, 563 F.2d 191 (5th Cir. 1977).

information would continue to be collected but it would be made available only to Federal agencies and the state regulatory commissions, and then only upon written request. Initially, the general public's access to the data would be limited to a summary, showing a "utility's average cost of fuel." The FTC recommended that the detailed data be made public after a delay of perhaps two years since it would lose its "competitive significance" by that time.

The Justice Department concurred in these recommendations. By letter dated July 19, 1977, reproduced as APPENDIX D to the Notice of Proposed Rulemaking, the Acting Assistant Attorney General of the Antitrust Division indicated that Justice shared the "FTC's concern that the public dissemination could have harmful anticompetitive effects" and therefore urged this Commission to adopt the FTC's proposal.

Proceedings in the Docket

In issuing its Notice of Proposed Rulemaking on August 15, 1977, 42 FR 51609, the Commission gave considerable weight to these initial FTC and Justice recommendations. It proposed to continue collecting the Form 423 data but to withhold the detailed data from the public for one year. During this one year period, it proposed to issue a monthly summary showing the average cost of fuel delivered to the plants of each reporting utility. The summary would not identify individual fuel suppliers nor would it show expiration dates of particular contracts. During the one year period, access to the detailed data would be limited to the Commission and its Staff and to other Federal and state agencies upon written request by the head of the agency.

Due to a delay in publication of the Notice of Proposed Rulemaking in the **Federal Register**, the Secretary extended the time for filing comments to October 28, 1977, by Notice of Further Extension of Time issued Octobr 14, 1977, 42 FR 56756. Comments on the Petition and the Proposed Rulemaking were received from the Petitioners, fifteen investor-owned utilities, six publicly owned utilities, one public power association, three fuel companies, ten nongovernment consumer or public interest groups, two state consumer agencies, fourteen state regulatory bodies, two regulatory associations, one Governor, one state legislative body, four Federal agencies, four U.S. Senator, four cities, and eight private individuals, corporations or trade associations.

Upon review of the comments received, Staff decided that certain specific questions needed clarification for a more complete understanding of the issues involved. By Notice issued February 1, 1978, 43 FR 5524, the Secretary scheduled a public conference on March 9, 1978, to discuss these specific questions. At the conference, presided over by the Commission's Chief Trial Counsel, oral comments were made by fourteen persons representing the Petitioners, state and Federal agencies, industry and private individuals, followed by questioning from Commission Staff. In addition to oral comments, written comments were accepted through April 10, 1978 (Transcript at 174). Comments received in response to the Notice of Conference included comments from two investor-owned utilities, two state consumer agencies, one non-government consumer organization and one coal company, which had not submitted comments earlier.

Responses

All 17 investor-owned electric utilities commenting, in addition to the 16 petitioner utilities, supported restricting the availability of Form 423 data. Several expressed the view that the one year delay in availability proposed by the Commission should be lengthened. Of the six publicly-owned systems that provided comments, four expressed support for restriction of price data availability, one opposed such restriction, and one expressed no objection to delayed release of the data so long as the data are collected. However, the American Public Power Association recommended that there be no restriction on availability of the data.

Generally, the 19 state agencies or offices commenting were opposed to restrictions of data availability to the public. Some of the regulatory bodies expressed a principal concern for continued state access to the complete data set. Several expressed the view that public access facilitated intervention by consumer groups, which enhanced the effectiveness of their own regulatory efforts. The National Association of Regulatory Utility Commissioners expressed a similar view. The 11 responding consumer interest groups were also opposed to restriction of data availability; several indicated that their data needs for monitoring utility fuel buying practices could not be satisfied by the average price data proposed to be made available. Three coal companies and a coal consultant indicated that the Form 423 data were highly useful in maintaining a current awareness of the coal market. The small firms stated that they find the specific price data useful in making competitive bids, while the larger firm was willing to forego price data in order to continue to have available the general pattern of coal quality and supply discernible from the Form 423 data. The Office of Consumer Affairs, United States Department of Health, Education and Welfare (HEW), opposed restricting data availability because it considers that anti-competitive effects in the coal market were highly unlikely and price information was generally helpful to the consumer.

Comments from industrial firms and consultants stated that they regard the price data as valuable in showing the trends of fuel supply and prices and that the detailed information is both important and unavailable to them from other sources. One industrial group reported that the detailed data had been useful in monitoring utility use of natural gas as a boiler fuel in relation to the supply and cost of natural gas for industrial purposes.

Two publishing organizations which regularly report the Form 423 price data contended that the availability of the data provided benefits to industry and the public which outweighed any possible harm from anticompetitive effects.

In supplementary statements filed after the Public Conference, both Justice and the FTC reversed their earlier positions and recommended continuing to make all of the data collected on Form 423 available to the public without delay. Citing studies which had become available since its July 1977 letter, Justice indicated that the potential for anticompetitive behavior was "substantially less than previously thought." The FTC indicated that after further analysis of the coal market and a review of the comments filed, it had reached the conclusion that the "antitrust risks" were "not sufficient to require or justify modification of the FERC's current policy of promptly publishing all Form 423 data."

Issues Raised

The Petitioners contend that a series of cases decided under the Freedom of Information Act (cited in Footnote [1], page 4, supra), required us to consider whether unrestricted public disclosure would be likely to result in injury to the disclosing parties. If this is found to be the case, the Commission must then consider alternatives to full disclosure, which would mitigate the harm of full disclosure while at the same time satisfying the public's need for information.

In fact, a more comprehensive procedure was prescribed by the Court in *Pennzoil* to be used in determining the balance between the benefit to the public interest and the harm to those supplying the data resulting from its disclosure. We are required to consider:

A. whether disclosure will significantly aid us in fulfilling our mandates;

B. the harm to those supplying the data *and* the harm to the public in general; and,

C. the alternatives to full disclosure that will provide the public with adequate knowledge to participate fully in our proceedings and other useful information, but at the same time protect the interests of those supplying the data.

Each of these three requirements has been met in this Docket. The consideration of these three questions is discussed in some detail below.[7]

A. *Will disclosure significantly aid the Commission in fulfilling its functions?*

The first consideration is viewed in broad terms, including within its purview our responsibility for assuring that rates for electric power wholesale sales under the Commission's jurisdiction are just and reasonable,[8] and including also the responsibilities under the Federal Power Act formerly exercised by the FPC, and now by the Department of Energy, for promoting conservation of resources [9] and providing a wide range of electric power information to the Congress and the public.[10] The latter function aids effective participation in electric regulatory matters and supports the formulation of electric power policies. Form 423 was initiated at a time when it was becoming clear that the Nation would experience increasing energy supply difficulties. Its basic intent was to provide visibility for the Commission and the public of the trends of electric power fuel supply patterns and costs. This information was needed by the Commission to evaluate potential electric power fuel supply problems, to determine fuel alternatives available to power plants and the costs of fuel switching and to monitor the interfuel competition between electricity and natural gas. Various statistical compilations of the reported data have been prepared and published on a regular basis. See, for instance, the Monthly Report on Fuel Cost and Quality. These compilations represent the primary output of the Form 423 reporting system and are apparently widely used by government and industry as reliable indicators of utility fuel purchase patterns, variations between short and long term contract fuel prices, and differentials in usage and price of fuels of varying qualities.[11]

The Form 423 reporting system was not designed to serve as a compliance system for auditing utility fuel cost accounting, nor as a mechanism for establishing the prudence of specific utility fuel acquisition decisions. In the experience of this Commission, such investigations require far more information than is provided by the Form 423 reports. Nevertheless, the original utility reports do contain information on each fuel delivery and, together with the statistical summaries, can be used as a starting point for conducting a fuel audit.[12] The remarks of the Pennsylvania Public Utility Commission on this point are illustrative: [13]

"There are currently before (the Pennsylvania PUC) complaints against the major electric utilities under its jurisdiction alleging that contracts for fuel procurement were not enforced as to agreed price and Btu content. The structure of Form No. 423 currently permits review on a contract-by-contract basis of statistical information on price and Btu content as well as identification of contract type and mine location."

It also appears that availability of the utility Form 423 reports as filed has aided the intervention of consumer groups before various regulatory bodies.[14]

The Office of Consumer Affairs, U.S. Department of Health, Education and Welfare contended that "many abuses of automatic fuel adjustment clause mechanisms and other fuel buying practices would go undetected if consumer groups were not able to investigate and challenge them" since a number of "state commissions are understaffed." [15]

The Environmental Defense Fund describes the usefulness of Form 423 in the following way: [16]

"Every time a choice is made by a utility or an official body regarding which kind or what grade of fuel to use, not only must the environmental costs be considered, but also the economic costs, namely price. Environmental and citizen groups must know what is economically feasible when presenting their recommendations regarding these choices to boards and government agencies * * *

* * * Since 1973, EDF has participated in several electric utility rate hearings to present the case for peakload pricing * * * The price data for fuels reported on Form 423, unavailable otherwise has been an invaluable aid in our economic analysis * * *."

We note that Congress recently has expressed its belief that consumer intervention is helpful to regulatory bodies at both the federal and state levels. The Public Utilities Regulatory Policies Act of 1978 provides for grants to state offices of consumer services. The same law also establishes an FERC Office of Public Participation.

Interventions at the state level can be directly helpful to us. Generally, the same fuel is used to generate electricity for both retail and wholesale sales.[17] If a state commission finds that a utility's fuel purchases have been imprudent, that finding is of considerable interest to us. It provides a signal to us to take a very careful look at the utility's fuel costs before passing on the justness and reasonableness of its wholesale rates. The assistance to state level intervention provided by Form 423 data can be of direct benefit to us in

[7] In *Union Oil*, the use of rulemaking was upheld in this type of proceeding so long as the record contains sufficient factual data, however informally presented, to provide substantial evidentiary support for the action taken.

[8] Federal Power Act, Sections 205, 206.

[9] Federal Power Act, Section 202(a).

[10] Federal Power Act, Sections 311, 312.

[11] The information has been used by the Economic Regulatory Administration, Department of Energy, to determine coal prices and availability for the Coal Conversion Program; by the Environmental Protection Administration to track quantities and quality of electric utility fossil fuel purchases to assess environmental impacts; by the Bureau of Labor Statistics, Department of Labor, to calibrate its Industrial Commodity Price Index; by the Corps of Engineers, Department of the Army, to survey utility coal flow patterns for lock and dam planning, by the U.S. Geological Survey, Department of the Interior, in its update of coal reserve estimates; by the Department of Commerce in its econometric models of income distribution; by the Council on Wage and Price Stability in its study of price formation in the coal industry; by the Department of Justice and the Federal Trade Commission in their analyses of market concentration in the coal industry.

The data are abstracted and published in various forms in a number of trade publications serving the electric utility industry, the coal and oil industries and industrial energy users.

[12] Letter from Office of Consumers' Utility Counsel, State of Georgia, March 6, 1978, p. 9, and statement of Alvin Garber, representing the Office of Peoples' Counsel of Maryland at Public Conference, March 9, 1978, transcript p. 143.

[13] Statement of Pennsylvania Public Utility Commission for Public Conference, Docket RM 77-2, filed February 27, 1978.

[14] See for example: Consumers' Council of Ohio, comments filed October 17, 1977; Environmental Action Foundation, comments dated September 13, 1977; Colorado Public Interest Research Group letter of September 29, 1977; Public Interest Research Group letter of September 14, 1977; Utility Consumer Action Group comments of September 28, 1977.

[15] Prepared statement of I. Curtis Jernigan, Jr., Director of Economic Policy and Planning, Office of Consumer Affairs, March 9, 1978.

[16] Environmental Defense Fund Letter, October 14, 1977.

[17] One exception would be unit sales designated for a specific wholesale customer.

monitoring captive coal costs. Clearly, intervenors in state proceedings can be more effective with access to a complete and timely body of data on fuel costs. The complete Form 423 data set is particularly useful for this purpose because it allows comparison of the prices paid for captive coal with the prices paid for comparable non-captive coal by a particular utility or by neighboring utilities. We note that the significance of captive coal operations is increasing.[18]

Form 423 has also been used in other regulatory forms. The Petrochemical Energy Group (PEG), an organization of petro-chemical producers, indicated that data available from Form 423 has been of considerable use to them in interventions before the Economic Regulatory Administration (ERA) with respect to the allocation of liquid-based synthetic natural gas (SNG). The group stated: [19]

"Thanks to the invaluable assistance of the supplier data contained on Form No. 423, PEG has often assisted proper allocation decisions and enforcement efforts by identifying violations, developing factual data and presenting arguments in agency proceedings. The Form No. 423 data enables interested groups to make the following determinations: whether gas is being supplied for the generation of electricity at the same time that SNG is being produced; whether gas is being supplied for low priority gas utility boilers with alternative fuel capability while high priority users with no alternate fuel capability are being curtailed; whether users are properly bearing the costs of the expensive SNG; and whether the cost to the ultimate consumer of SNG is comparable to the cost of other available fuels."

In summary, the evidence developed in this rulemaking proceeding indicates that availability of the Form 423 reports as filed can significantly assist the regulatory processes of State and other Federal agencies, as well as those of this Commission. It is also apparent that the detailed information present in the reports as filed, such as the origin of the fuel shipments and cost of individual deliveries, permits independent non-government analyses of fuel supply patterns and trends which can usefully supplement government studies.

We conclude, therefore, that continued availability of the data as filed assists this Commission in discharging its broad responsibilities for just and reasonable wholesale rates and in fulfilling the requirements of the Federal Power Act for supplying significant electric power information to the Congress and the public.

B. *What is the harm to those supplying the data and what is the harm to the public in general?*

In *Alabama Power*, the Court indicated that the utilities which sought to limit public disclosure of Form 423 had to show evidence of *actual* harm resulting from the reporting requirements at that time. [20] In this proceeding, the Petitioners have argued that a new standard has been developed materially changing the evidentiary standards that are relevant to their petition. In particular, they argue that this "likely to harm" standard:

"does not require a showing of actual injury (though such showing has been made here, as discussed infra). Rather, it requires a showing that disclosure would *likely* result in competitive injury." [21]

We believe that the issue of what is the appropriate evidentiary standard is moot in this proceeding because the Petitioners have not presented evidence which would satisfy either standard. [22]

1. The "Likely to Harm" Standard.—It is the contention of Petitioners that the Present Form 423 reporting system "may set the stage for anticompetitive behavior by suppliers." It appear that this allegation is likely to be true only under certain conditions: (1) The utilities are generally purchasing fuel in oligopolistic markets; (2) the information is released with sufficient timeliness so that it can be used to coordinate actions among fuel suppliers; (3) the information being released provides a complete description of the transaction.

A detailed analysis as to whether these conditions currently prevail is presented in PART II of this order. We conclude, based on this analysis, that coal markets are workably competitive and that the current Form 423 reporting system is not likely to contribute to anticompetitive behavior by coal suppliers. We also conclude that the two month delay in availability of Form 423 data makes it unlikely that the data could serve to maintain price coordination in any spot fuel market.

2. The "Actual Injury" Standard.—The evidence offered by the Petitioners in support of their contention that disclosure of Form 423 data has already led to anticompetitive conduct by fuel suppliers is not convincing. The petitioners cite a letter filed by the South Carolina Public Service Authority (SCPSA), which states that soon after SCPSA began filing Form 423's, "coal suppliers with which we had lower cost contracts immediately began to pressure us for higher prices." [23] The Petitioners also draw attention to a similar statement made by the American Electric Power Company (AEP). In comments filed September 30, 1977, AEP asserted that public availability of Form 423 data "has altered to the disadvantage of the AEP system and its customers the bargaining position of the utility vis-a-vis coal producers." AEP also pointed out that it had been "confronted by fuel suppliers using data which they boasted was taken" from the Commission public records. [24]

These comments do not prove the existence of anti-competitive behavior. SCPSA's suppliers may have "pressured" and AEP's suppliers may have "boasted," but that in itself does not prove that either set of suppliers actually succeeded in obtaining higher prices. Assume, for the sake of argument that the Petitioners could show that AEP and SCPSA's fuel suppliers succeeded in charging prices higher than the prices that would have prevailed if the suppliers had not had access to Form 423 data. This still would not necessarily prove anti-competitive behavior. A shift towards higher prices might reflect oligopolistic coordination (the Petitioners contention), but such a shift would also be consistent with the operation of a competitive market in which the quality of price data available to sellers had suddenly improved. In such a market it would not be unreasonable to expect a seller to demand a higher price if he learned from Form 423 data that he had been offering

[18] A staff study indicates that by 1985, U.S. electric utilities will be supplying 18.8 percent of their total coal needs from captive sources. In 1974, captive coal accounted for only 9.0 percent of total coal deliveries to U.S. utilities. See *Electric Utilities Captive Coal Operations*, Staff Report by the Bureau of Power, June 1977.

[19] Testimony of the Petrochemical Energy Group, March 9, 1978.

[20] The Court noted that, "The utilities remain free to present a new petition for amendment of regulation 141.61 accompanied by factual representations sufficient to fill the gaps that have been identified in their earlier submissions," (511 F. 2d. 393). The Court also observed that " the utilities were not prepared to give any specifics whatever as to the existence of an injury." (511 F. 2d. 391).

[21] Response to Request for Conference and Supplemental Comments of Sixteen Company Electric Utility Groups, October 28, 1977, p. 2. (hereinafter *Response to Request*).

[22] The record shows that the Petitioners believed that they had succeeded in making an adequate showing under *both* standards. On October 28, 1977, they stated that, "Public Disclosure Of Form 423 Has Caused And Is Likely To Further Cause, Substantial Harm to Utilities and Their Customers.", (*Response to Request* p.3). In their most recent brief, filed one month after the public conference, they asserted that "*Unrestricted public disclosure of Form 423 has caused and will likely further cause, substantial harm to utilities and their customers through higher fuel prices.*" (Supplemental Comments of Electric Utility Group, April 10, 1978, p. 1.)

[23] Letter from Mr. William C. Mescher, President, South Carolina Public Service Authority, September 19, 1977, p.1.

[24] Views and comments of the American Electric Power System, September 30, 1977, p.4.

his coal at less than the going market price. While it is true that this would injure buyers in that they would have to pay higher prices for coal, it is incorrect to characterize this improvement in the bargaining position of sellers as anti-competitive.

In fact, under certain circumstances, an improvement in sellers' bargaining power resulting from disclosure of Form 423 data would be pro-competitive. This point was made by Dr. Zellner, economic consultant for the Petitioners. Citing the specific case of a market in which "the supply side is competitive and the demand side is oligopolistic," (commonly described as an oligopsony market) Dr. Zellner observed that, "an improvement in the bargaining position of suppliers can be expected to move the price/quantity solution closer to the competitive one." Dr. Zellner also noted that the "effect of Form 423 disclosure" can be characterized as "pro- or anti-competitive" only "insofar as it can be predicted to move this price/quantity solution closer to or further away from that which would be achieved in a competitive market."[25] Essentially the same position was taken by the Federal Trade Commission (FTC). The FTC stated that:

"An increase in the bargaining power of an individual coal producer would not necessarily be anti-competitive. If the Form No. 423 data were used to facilitiate price fixing or conscious parallelism, such a situation would clearly be anti-competitive. The improvement in the bargaining position of an individual fuel supplier would not be anti-competitive unless the fuel supplier thereby obtained some measure of monopoly power."[26]

In summary, there are two problems with the evidence presented by the Petitioners. First, it cannot be determined from the evidence presented whether fuel suppliers actually suceeded in obtaining higher prices because they had access to Form 423. Fuel suppliers may have "pressured" for higher prices, but that does not prove that they actually received higher prices. Second, even if the evidence were clear that the Form 423 data improved the bargaining position of certain sellers so that they were able to charge higher prices than they could have in the absence of the data that, in itself, does not prove anti-competitive conduct. If the "actual injury" standard is to make any sense in an antitrust context, it must be shown that the injury (i.e., the higher price) was the direct result of anti-competitive behavior on the part of fuel suppliers. It is the Commission's conclusion, based on a review of the record, that neither the Petitioners nor anyone else made such a showing.

C. *What alternatives to full disclosure exist (if any) that will provide the public with adequate knowledge to participate fully in the Commission's proceedings and other useful information, but at the same time protect the interests of those supplying the data?*

The Notice of Proposed Rulemaking observed that the average fuel purchase price data by utility and plant, which are published monthly, provide a basic means for public monitoring of utility fuel expenses, allowing comparisons between utilities and over time. It was thought that such data would provide for reasonable public oversight of utility fuel purchasing operations. However, evidence has been presented that instances of possible fuel purchasing imprudence are more visible in the individual fuel delivery data, where correlations of specific fuel grade, source and price can be made.

For example, in comments made at the public conference, the representative of the Office of Consumer Affairs, HEW, stated:

"The substantial benefits which result from public participation in electric utility rate proceedings have been recognized by both the federal government and state utility commissioners * * *. The information in Form 423 is necessary for analysis of many of the issues * * *. An average price which includes old contracts, new contracts, and spot purchases would be almost useless in analyzing fuel prices. An average price cannot be used to investigate whether a utility is paying too much for captive coal, paying more than necessary for spot coal purchases, or engaging in other inefficient purchasing policies."[27]

The State of New Jersey [28] and Amax Coal Company [29] have presented specific examples of why detailed data are required for use in rate hearings and environmental hearings. The California Public Utilities Commission sheds more light on this subject:[30]

"The summary reveals nothing about *when* particular contracts were negotiated, and this feature alone renders comparison between listings of different utilities' costs uniformative * * *. The purpose of a state commission's inquiry into the fuel cost of a regulated utility is not to determine whether the company has done a good or bad job as a bargain seeker. It is the much more precise goal of deciding whether a utility has paid an *unreasonably* high price for some or all of its fuel. That question can be answered only be detailed analysis and comparison of specific fuel supply contracts. For members of the general public to take an active role in such an inquiry requires that such persons have access to detailed contract information in order to judge when objection is warranted."

It appears, then, that certain public uses of the Form 423 data require the detailed information available only on the as-filed forms. We are unable to conceive of any means of satisfying these public uses while at the same time withholding the data alleged by the Petitioners to be damaging. In fact, the focus of public interest is on the very price data Petitioners wish to conceal, and this recognition leads to the conclusion that there is no alternative to full disclosure which can provide the public with equivalent information.

Concluding Observations

This case has presented some special difficulties for the Commission. During the proceeding it was apparent that there are strongly held beliefs on both sides of the issue, supported by various theories, but a scarcity of evidence to demonstrate convincingly the correctness of the beliefs. Our decision is based on the available evidence, on analyses submitted by various groups and on our own independent evaluations. However, it necessarily relies importantly on the absence of an adequate showing that harms alleged to result from various actions do in fact occur, or are likely to occur.

We noted particularly that a large number of utilities apparently are convinced that they can purchase fuel more economically if knowledge of their detailed transactions is withheld from the fuel industry for a considerable period of time. This belief was not restricted to investor owned utilities. Although the American Public Power Association supported full disclosure, four out of six of the individually-responding publicly owned utilities also favored limiting disclosure. However, despite the belief, we could not find evidence that disclosure has had a significant adverse effect on utility fuel expenses, or would be likely to.

Our problem in assessing the effects of data availability is perhaps best illustrated by the reversal of the recommendations of the Federal Trade Commission and the Department of Justice. Both agencies, prior to the issuance of the Notice of Proposed Rulemaking, recommended to the

[25] Response to questions posed by FERC staff in Notice of Public Conference Issued February 1, 1978, in Docket No. RM77-2, March 9, 1978, p.10.

[26] 1978 FTC Letter, p.12.

[27] Prepared Statement of I. Curtis Jernigan, Jr., pp. 38, 39, 46.

[28] Comments Submitted by the Division of Rate Counsel, Department of the Public Advocate, State of New Jersey, March 8, 1978.

[29] Comments dated March 7, 1978, Part I, page 2; See also Memorandum of John W. Wilson, March 8, 1978, pages 8-11.

[30] Additional Comments dated March 7, 1978, page 3. See also the letter from the Georgia Consumers' Utility Counsel, March 6, 1978, pages 9-10.

Commission that it restrict disclosure, to minimize the likelihood of anti-competitive behavior. Following the Commission's proposal to limit disclosure, the two agencies advised the Commission that their views had changed and that they now favor continued full disclosure. We have no objection to the shift in position of the agencies and, in fact, very much appreciate their continued analysis and counsel. But the change in recommendations by the two agencies in charge of monitoring competitive conditions in the economy certainly shows that the issue is not easy to resolve.

We note that most of the evidence and comments filed in the proceeding concerned coal markets, even though expenditures for oil constituted almost 40 percent of total utility fuel purchases in 1977. Apart from expressions of concern by two utilities that Form 423 data may have increased their fuel oil costs,[31] no specific information was presented relating to the oil market. No attempt was made to restrict the scope of the proceeding to coal markets In fact, the Notice of Public Conference asked for evidence and comments on the Petitioners' allegations with respect to all fuel markets. However, neither the Petitioners nor any intervenor brought forth information on oil markets.[32] While our finding that the current Form 423 reporting has not "set the stage for anti-competitive behavior", nor is likely to in the future, is based specifically on our analysis of coal markets, the general absence of evidence of harm in any fuel market is the most important single consideration in our decision.

Finally, we note that the public interest is generally served by the open availability of information concerning matters which directly affect the public, a principle widely recognized in statutes concerning the operations of public agencies. With some 78 percent of electric generation being dependent upon coal, oil or gas fuels in 1977, at a total fuel cost of $22.5 billion, the topic of utility fuel supply is clearly a legitimate matter for public interest and scrutiny. In view of both the general desirability of information availability and the present concerns regarding the efficiency of utility fuel procurement, we believe a convincing showing of harm would be needed to justify limiting access to the data.

The Commission Finds

1. The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently pending before this Commission through the submission, in writing, and presentation at a public conference held on March 9, 1978, of data, views, comments and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

2. The use of Form 423 data by public intervenors offers significant assistance and benefit to this Commission in fulfilling its functions under the Federal Power Act.

3. There is no known alternative to full disclosure of Form 423 data which can provide equivalent information to public intervenors, and to the public in general.

4. Evidence has not been presented showing that electric utilities have actually been injured by anti-competitive behavior resulting from or facilitated by the disclosure of Form 423 data.

5. Evidence has not been presented showing that the continuation of the present Form 423 disclosure procedure is likely to lead to anti-competitive behavior in any utility fuel market. The plausibility of this allegation would have to be based on a showing that fuel suppliers currently possess or are likely to acquire some significant degree of market power.

6. Based on our analysis of coal markets, we conclude that the regional short and long term markets are workably competitive and are likely to remain so in the future.[33]

7. No showing has been made on the record that oil suppliers currently possess or are likely to acquire a significant degree of market power in the oil markets of concern to utilities.

8. The two month lag in the release of Form 423 data makes it unlikely that the data could be used to maintain a non-competitive price structure in any spot fuel market.

9. It is unlikely that the limited long term contract information available from Form 423 could be used to maintain a tacit or explicit price coordination agreement by producers in long term coal markets.

The Commission, acting pursuant to authority ganted by the Federal Power Act, as amended, particularly Sections 301, 304, 307, 308, 309, and 311 thereof (49 Stat. 854, 855–856, 856–857, 858, 858–859; 16 U.S.C. 825, 825c, 825f, 825g, 825h, 825j) *orders:*

(A) The Petition of Certain Electric Utilities for amendment of the Commission's Regulations with Respect to Form No. 423 filed October 15, 1976, is hereby denied.

(B) Effective upon issuance of this order, the proposed rulemaking in Docket No. RM77–2, is terminated.

(C) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,
Secretary.

Part II—Market Conditions and Data Requirements Needed to Support Price Coordination by Fuel Suppliers

The Petitioners in Docket No. RM77–2 contend that the present Form 423 reporting system, "may set the stage for anticompetitive behavior by suppliers." This allegation is likely to be true only under certain conditions: (1) That the utilities are generally purchasing fuel in oligopolistic markets; (2) that the information is released with sufficient timeliness so that it can be used to coordinate actions among fuel suppliers; and (3) that the information being released provides a complete description of the transaction. In this part of the Order, we examine the evidence as to whether these conditions currently prevail.

Frederic Scherer, in analyzing the impact of information on market performance, make the following observation:

"It might seem paradoxical that there could be anything harmful about information dissemination activities, which at first glance appear only to perfect the market. However, perfect information is unambiguously beneficial only in the context of purely competitive markets. When the market is

[31] Comments of the Consolidated Edison Company, October 12, 1977 and comments of Pacific Gas and Electric Company, October 17, 1977.

[32] The Petitioners alleged in their final set of comments that "With respect to fuel oil broad market analyses are not available." *Supplemental Comments Of Electric Utility Group,* April 10, 1978, p. 3.

[33] The Department of Justice concurs with this conclusion. In a letter dated March 9, 1978, the Assistant Attorney General, Antitrust Division, advised the Commission that "Further analysis has convinced us that the structure at the coal industry indicates a market conducive to healthy competition" (at 2). The letter went on to conclude that, "the market conditions which might give rise to concern over the public availability of disaggregated price information are not present, and taking into account the position of a number of nongovernmental utility monitoring groups that the continued availability of this data is helpful in discharging their responsibilities, the Department now believes that any balancing of interests should now be struck in favor of continued public access to this information. Therefore, the Department of Justice recommends that the Commission continue its present policy of making the date collected via Form 423 accessible to the public" (at 4–5).

oligopolistic, it may impair rather than invigorate rivalry." [1]

In an oligopolistic market, [2] information may "impair rather than invigorate rivalry" by serving as a basis for the maintenance of a tacitly or explicitly collusive price structure. It is generally agreed among economists that the potential for collusive behavior exists in virtually every oligopolistic market. Collusion, as both Justice and the FTC noted, can take many different forms.[3] At one extreme it may involve an explicit price fixing agreement with regular communication among sellers regarding the appropriate price level and share of total market sales that each seller will be allowed the capture.[4] Or, at the end of the spectrum, it may involves a loose and more subtle form of pricing coordination known as "conscious parallelism."[5]

Fortunately, sellers participating in a collusive agreement always have an incentive to cheat on that agreement. The incentive, of course, is the opportunity to earn higher profits. A seller who is able to cut prices to buyers without having this price shading detected by other sellers will be able to capture a larger share of the market's total sales and thereby earn higher profits. The existence of this phenomenon was explicitly recognized by the court in *Alabama Power:* "In markets characterized by few sellers, secret shading of announced prices may provide the only form of price competition." (511 F.2d at 389) The court went on to note that, "publicizing transaction prices will chill price competition by foreclosing any opportunity for a seller to lower his price without fear of detection and retaliation. The chilling effect flows from publicity itself and does not depend on who collects or disseminates the information." (511 F.2d at 389). The paradox, then, is that within a concentrated market the free flow of detailed information about individual transactions may serve to stabilize the operation of a collusive agreement.

In contrast, within a less concentrated market, the disclosure of detailed price information is likely to have a pro-competitive impact. As the number of sellers increases and the share of total sales supplied by an individual seller decreases, sellers are more likely to compete rather than collude.[6] In a competitive environment information will tend to make the market operate more efficiently. This means, in effect, that prices will be distributed within a narrower range. The widespread dissemination of price information reduces the likelihood that in any given transaction a seller will mistakenly sell at too low a price or that a buyer will needlessly pay too high a price.[7]

There was general agreement by the Justice Department, the Federal Trade Commission and the Office of Consumer Affairs (HEW), that the Petitioners' allegation required the implicit assumption of an oligopolistic market.[8] It is noteworthy that even the Petitioners acknowledged this point, though in a somewhat indirect fashion. For example, the Petitioners thought it important to draw our attention to a comment of Professor William Baxter (Stanford Law School) in which he observed that "to the extent that the exchange of data among competitors in a concentrated industry is to be tolerated, it should be tolerated only as to data which is aggregated to a fairly high level and which is not too contemporaneous." [9] Unfortunately, the Petitioners did not seem to see any significance in the fact that the Baxter recommendation was limited to a "concentrated industry" nor did they find it useful to bring to the Commission's attention another sentence in the preceding paragraph of the same article in which Baxter emphasized that the principal danger of information exchange was that it would facilitate "oligopolistic interdependence." In another communication (Supplement to Petition, January 17, 1977), the Petitioners supplied the Commission with a copy of the stipulations agreed to by the Department of Justice, the General Electric Company and Westinghouse Electric Corporation on December 10, 1976, which modified the 1962 decree prohibiting cetain price-fixing practices in connection with the sales of large steam turbines. The main thrust of the stipulations is to prohibit the exchange of price and related information between these two manufacturers. The Petitioners suggested that these stipulations were very relevant to our deliberations in this proceeding. We reviewed the stipulations; their relevance was not obvious to us. The heavy electrical equipment industry is a tight oligopoly with a long and well-documented history of collusive behavior.[10] We did not see evidence which indicated similar characteristics for the coal industry, which was the subject of most of the record developed by the Petitioner's and other parties. In fact, we did not see any similarity between the two industries apart from the fact that electric utilities are the principal customers for both industries.

Evidence on Market Structure and Other Factors

The plausibility, then, of the Petitioners' allegation rests in part on an analysis of the structure of coal markets. The Petitioners did not present any studies of market structure. It was their contention that a "full-blown market analysis is not required to determine the need to limit public disclosure." [11] Nevertheless, they did agree that such studies would be relevant for our

[1] Frederic Scherer, Industrial Market Structure and Economic Performance, Chicago Rand McNally & Company, 1970, p. 449. Dr. Scherer, currently Professor of Economics at Northwestern University, was formerly Director of the Bureau of Economics at the Federal Trade Commission.

[2] An oligopolistic market is a "market in which sellers are sufficiently few in number so that each believes his economic fortunes are perceptibly influenced by the market action of other individual firms and that those firms are in turn affected significantly by his own actions." (Scherer, p. 10.)

[3] Letter from John Shenefield, Assistant Attorney General, Antitrust Division to the Secretary (FERC), March 9, 1978, p. 1 (hereinafter the *1978 Justice Department Letter*) and a letter from Carol M. Thomas, Secretary, Federal Trade Commission to the Secretary (FERC), April 4, 1978, p. 2 (hereinafter the *1978 FTC Letter*).

[4] A careful analysis of factors which facilitated formal or explicit agreements among competitors in cases initiated by the Justice Department between January 1963, and December 1972, under Section 1 of the Sherman Act can be found in George Hay and Daniel Kelley, "An Empirical Survey of Price Fixing conspiracies," *Journal of Law and Economics*, Volume 17, No. 1, April 1974, pp. 13–38.

[5] This term is used to describe a situation in which sellers in a oligopoly market have come to realize that price cutting will probably induce counteractions from rivals that in the end will leave all sellers worse off. In order to avoid this competition each seller exercises restraint in the hope that other sellers will act in a similar fashion. If sellers generally observe this "understanding," then prices will tend to stabilize above competitive levels.

[6] This occurs for a variety of reasons. First, as the number of sellers increases, each seller is more likely to believe that a unilateral price cut will have a less noticeable impact on the sales of other sellers. Second, as the number of sellers increases, there is a higher probability that at least one seller will have a different cost structure and therefore a different notation as to what constitutes the most advantageous price. Finally, collusion will simply become difficult as more and more sellers have to agree to a common price level.

[7] See the *1978 FTC Letter*, p. 11.

[8] 1978 Justice Department Letter, p.1, 1978 FTC Letter, p.9, and Prepared Statement of I. Curtis Jernigan, Jr., Director of Economic Policy and Planning, Office of Consumer Affairs, March 9, 1978, p.7.

[9] William Baxter, Review of Richard Posner's "Antitrust Law: An Economic Perspective". *The Bell Journal of Economics*, Autumn 1977, p. 615, quoted in *Response to Request*, p. 7, footnote 1.

[10] See Ralph G. M. Sultan, *Pricing in the Electrical Oligopoly*, Volumes I and II, Cambridge, Massachusetts: Harvard University Press, 1974 and Clarence C. Walton and Frederick W. Cleveland, Jr., *Corporations on Trial: The Electric Cases*, Belmont, California: Wadsworth Publishing Company, Inc., 1964.

[11] Response to Request, p. 8.

deliberations.[12] Since the Petitioners did not present evidence on market structure, we relied on several studies of the coal industry that become available during the last year.

The two studies that were cited most frequently by participants in this proceeding were: *The State of Competition In The Coal Industry* issued by the General Accounting Office on December 30, 1977 (hereinafter the "GAO Report"), and *Coal Price Formation* (1977) prepared by Charles River Associates, Incorporated, for the Electric Power Research Institute (hereinafter the "Charles River report"). A third study, *Competition In The Coal Industry* prepared by the Justice Department (hereinafter the "Justice Department report) was initially described to us in summary form.[13] The full report became available in May 1978, and generally confirmed the findings of the GAO and Charles River reports.[14]

There is general agreement in all three reports that electric utilities purchase coal in regional markets.[15] The reports do disagree, however, on the number of regional markets and the boundaries of these markets. The Justice Department report identifies four regional markets—the Appalachian, Midwest, Northern Plains and Southwest markets. In contrast, the GAO and Charles River studies identify only three regional markets. The difference is attributable to the fact that the GAO and Charles Rivers reports combine the Midwest and Northern Plains markets in a single market (designated the Central Western market in the GAO report and the Midwest market in the Charles River report).

Among the various dimensions of market structure that affect the potential for collusion, seller concentration generally receives the most attention.[16] While the level of seller concentration is not the sole determinant of the degree of competition in a market, it is accepted in the economics literature that the likelihood of sellers colluding to raise prices above competitive levels increases, other things being equal, as the degree of seller concentration increases. The explanation for this phenomenon is that it is easier to coordinate pricing decisions, either tacitly or explicitly, in markets that contain a small number of sellers, each with a significant market share.[17] The key question, then, is: at what level of concentration does an oligopolistic market become susceptible to anticompetitive practices? In a recently published analysis of various energy markets, Professor Markham of Harvard University concludes that "there is a consensus among economists, antitrust law scholars, and public policy makers that a four-firm concentration ratio of 50 percent or less is a cut-off below which it cannot reasonably be inferred that market power is significant, or that tacit collusion among firms is a likelihood."[18] Professor Markham's view is shared by the Justice Department: "Virtually all economists agree, however, that when sellers are numerous and diverse, collusion becomes more difficult and is less likely to be effective if four-firm concentration is below 50 percent."[19]

Using the 50 percent standard, we looked at two types of concentration ratios, one which measured the percentage of total production accounted for by the four leading firms and the other which measured the percentage of uncommitted non-Federal reserves owned or controlled by the leading four firms. The first ratio provides a rough measure of the potential for collusion in spot sales.[20] The second ratio provides evidence regarding the potential for collusion in the market for sales under long-term contracts.

The Market for Short Term Sales

The evidence on concentration ratios in current sales is mixed. In the Appalachian market, both the Justice Department and the GAO reported that in 1974 the four leading producers accounted for 22.3 percent of the region's total coal production.[21] Based on this evidence, the Justice Department concluded that "This market appears to offer little potential for competitive problems."[22]

In the remaining regional markets, concentration ratios are higher. Using 1974 data, the Justice Department calculated a four firm production concentration ratio of 56.1 percent in the Midwest market and 37.7 percent in the Northern Plains market. As was noted earlier, GAO combines these two smaller markets into a single larger market designated the Central Western market. For this market the 1974 four firm production concentration ratio was found to be 44.3 percent. There is reason to believe that the technique used by GAO for delineating market boundaries

[12] Transcript, p. 23.

[13] The 1978 Justice Department Letter, p. 2–3.

[14] Citing nine earlier studies, the Justice Department observed that "the coal industry seems recently to have been the object of more studies of competition than any other industry in our economy." (Justice Department report, p. 83, ff. 166). Most of these studies have been reported widely in the industry and trade press. Therefore, given the nature of the Petitioners' allegations it is rather surprising that both their chief counsel and their economic witness were completely unaware of the existence of such studies. Transcript, p. 22–23.

[15] The FTC raised the possibility that some transactions might take place in sub-regional markets, but observed that "it is noteworthy that the petitioners have not been able to identify any such situations." (1978 FTC Letter, p. 6.) The FTC also noted that within the general category of bituminous coal a particular type of coal, such as low sulfur high Btu coal, might constitute a distinct submarket. This further segmentation would be justified only if utilities had limited ability to substitute between high and low quality coal. We do not believe this to be the case. It is clear that no buyer will pay more for higher quality coal than the incremental cost of using lower quality coal. The Justice Department has reported that "Recent estimates based on engineering data suggest that, at least for quality as measured by Btu and ash content, these incremental costs are low." (Justice Department report, p. 40.) Another factor which enhances the purchasing flexibility of utilities is blending. By blending different kinds of coal, utilities can achieve almost any quality level they want. Finally, distinctions between low-sulfur "compliance" and high-sulfur "non-compliance" coal may disappear with implementation of the 1977 Clean Air Amendment Act's requirement that utilities install sulfur-removing scrubbers on all new plants regardless of the type of coal burned in them.

[16] Other factors which may affect the ability of sellers to maintain prices above competitive levels are: barriers to entry; similarity of competitors; degree of buyer concentration; opportunities for communication; and nature of the product and the dominant mode of transaction.

[17] It should be emphasized that the fact that a utility regularly purchases coal from only two or three sellers does not prove that the relevant market for that utility is highly concentrated. As the Office of Consumer Affairs pointed out, it is not "inconsistent with the existence of a completely competitive market to see relatively stable buyer-seller relationships" and that to determine the extent of the relevant market it is necessary "to look at the alternatives such as how many equivalent sellers were available in that market area" and not how many were transacting business with the buyer at a particular moment in time. (Transcript at p. 111.)

[18] Jesse E. Markham, Anthony P. Hourihan, Francis L. Sterling, *Horizontal Divestiture and the Petroleum Industry*, Cambridge, Massachusetts: Ballinger Publishing Company, Inc., 1977, p. 5.

[19] Justice Department report, p. 55.

[20] It is a less than perfect measure since, for most fuel suppliers, some portion of current production is dedicated to existing long term contracts and is therefore not available for spot sales. However, if spot prices are favorable, most coal producers have the capability of increasing production by mining existing seams more intensively or opening up previously uneconomic seams and thus being able to supply new spot contracts in addition to existing long term contracts. In addition, there is evidence that coal producers do not always honor existing long-term contracts. In 1974, when spot prices moved significantly above prices on long term contracts many coal suppliers reneged on their long term contracts and shifted their output to the spot market. See *Report to the FTC on the Use of Automatic Fuel Adjustment Clauses and the Fuel Procurement Practices of Investor-Owned Electric Utilities*, Bureau of Economics and Bureau of Competition, May 1977, p. 135–136 and Justice Department report, p. 42.

[21] We gave less weight to the concentration ratios presented in the Charles River report because they are based on 1970 data.

[22] Justice Department report, p. 64.

may tend to overstate market size.[23] Therefore, we are inclined to accept the Justice Department's delineation of the Midwest and Northern Plains market as more accurately reflecting the realities of the market place as they existed in 1974. It should be noted, however, that the 56.1 percent concentration ratio probably overstates the potential for oligopolistic coordination in the Midwest market. According to Justice, in recent years, "the most important feature of competition" in the Midwest market was the "serve competition pressure from producers in the Northern Rockies basin." [24] The presence of this competition from suppliers outside the market, would reduce the liklihood that Midwestern producers could successfully engage in tacit or explicit price coordination.

Concentration in the Southwest market, based on current production was somewhat higher. According to the Justice Department, in 1974 the four leading producers accounted for 64.1 percent of the Southwest's total coal production. There are two factors which offset the anti-competitive potential of this relatively higher level of production concentration. First, most coal produced in this region is sold under long term rather than spot contracts.[25] Therefore, even if seller concentration is high in the short term sales market, it is of less importance given the small volume of coal that is sold under spot contracts. Second, and more importantly, of all the regional markets, the level of buyer concentration is highest in the Southwest market. In 1976, four utilities consumed 83.6 percent of the total amount of coal produced in the Southwest market for sale to electric utilities.[26, 27] It has been shown empirically that a high level of buyer concentration often serves as a countervailing force against a high level of seller concentration.[28] Large buyers are able to "play off sellers against each other and thereby impose a sort of competition which will resemble that which exists when no buyer or seller has market power." (footnote omitted)[29] Thus, even though seller concentration in production is relatively high in the Sourthwest, the existence of an even higher level of buyer concentration greatly reduces the potential for oligopolistic coordination.

In summary, the potential for collusive behavior in spot sales appears to be very small. Evidence on concentration levels in the Appalachian and Northern Plains markets suggests that there is very little potential for anticompetitive behavior in either of these markets. The Midwest market exhibits a higher concentration ratio. However, the simple four firm concentration ratio in production overstates the potential for oligopolistic coordination. The ability of Midwestern producers to maintain prices above competitive levels is effectively constrained by the availability of coal imports from the Northern Rockies. The highest concentration ratio in current production is found in the Southwest market. Here the four leading producers accounted for 64.1 percent of production. This high level of seller concentration is offset, however, by an even higher level of buyer concentration. Therefore, we conclude that it is unlikely that producers in the Southwest market have sufficient market power to maintain spot prices above competitive levels.

Form 423 Data Dissemination and Short Term Sales

We conclude, therefore, that coal producers generally do not have market power that would allow them, either individually or as a group, to maintain spot prices above competitive levels. But, even if the conclusion is incorrect, it would still be necessary under the "likely to harm" standard to show that the public availability of Form 423 data is a significant factor contributing to the ability of coal producers to maintain a non-competitive price structure in spot sales. Neither the Petitioners nor anyone else was able to make such a showing.

The Petitioners inability to produce such evidence is understandable if one takes a closer look at how Form 423 data is disseminated. Under the present reporting system, the information relating to a particular purchase, whether it is spot or long term, is generally not made public until at least two months after the transaction has occurred. Given the volatility of the spot market, it is hard to imagine how the release of information which is two months out of date will enable coal producers to maintain a price floor for spot sales in different regional markets.

The Market for Long Term Sales

Sales under long term contracts represent a somewhat different case. Here it is helpful to examine concentration ratios based on uncommitted non-Federal reserves. This requires some explanation. It will be recalled that a concentration ratio is a useful statistic only to the extent that it measures the likelihood that sellers, either individually or collectively, will be able to raise prices above competitive levels. In general, the ability of sellers to influence prices in future transactions will depend critically on how much of the commodity or product they can bring to market. In the case of coal sales under long term contracts, current production levels are not very useful for making this determination. A firm "may account for a large share of current deliveries yet have little or no ability to market coal in the future" if it has "contractually committed or extracted the bulk of its reserves."[30] The potential for collusion in long term contracts depends on the level of concentration that exists in uncommitted reserves. Since the resumption of coal leasing on Federal lands is not likely for several years, the present potential for anticompetitive behavior is best assessed by examining concentration levels in uncommitted non-Federal reserves.

Once again, the level of concentration varies considerably across regions. The 1974 four firm concentration ratios in uncommitted non-Federal reserves were as follows: 19.3 percent in the Appalachian market; 25.6 percent in the Midwest market; 46.9 percent in the Northern Plains market; and 66.3 percent in the Southwest market. An analysis based solely on seller concentration ratios would indicate a substantial potential for anticompetitive behavior in the Southwest market. Therefore, it is important to take note of the Justice Department's conclusion that "the prospects for non-competitive activity are not as serious as suggested by simply concentration rations" and that "there is no apparent reason to expect

[23] The GAO report uses a technique developed by Elzinga and Hogarty for delineating the geographic market. (See Kenneth Elzinga and Thomas Hogarty, "The Problem of Geographic Market Delineation in Antimerger Suits, *The Antitrust Bulletin*, Spring, 1973, p. 45–82). In general, an area is considered to a separate geographic market if it receives few imports and makes few exports of the product in question. The "few exports" condition may overstate size of the market. This occurs because it pushes the markets proposed boundaries "far enough beyond the exporting 'core' area to include the destinations of much of the core's exports." As a result, the "few exports" criterion may fail "to capture the power of a monopolist (or oligopolist) in an exporting region to charge non-competitively high prices to customers in that region." (Justice Department report, p. 46.)

[24] Justice Department Report, p. 65.

[25] Justice Department Report, p. A–28.

[26] Justice Department Report, p. 79.

[27] Sales to Electric utilities accounted for approximately three-fourths of coal production in the Southwest market in 1975.

[28] See S. Lustgarten, "The Impact of Buyer Concentration in Manufacturing Industries," *Review of Economics and Statistics*, Vol. 57, p. 125, and R. McGuokin and H. Chen, "Interactions Between Buyer and Seller Concentration and Industry Price-Cost Margins," *Industrial Organization Review*, Vol. 4, p. 123.

[29] Justice Department Report, p. 78.

[30] Justice Department Report, p. 56.

more competition problems in the coal market of the Southwest than in the nation's other workably competitive industries."[31]

The Justice Department points to several factors that have to be considered in addition to the level of seller concentration. First, as was noted earlier, the level of buyer concentration is very high in the Southwest market. The exercise of countervailing power by strong buyers will in most instances effectively thwart attempts by sellers to collude on prices. This applies to the market for long term purchases as well as in the market for spot purchases. A second consideration is the large size and relative infrequency of coal supply contracts in the Southwest market. The Justice Department states that this factor, by itself, would make "successful collusion quite difficult."[32] The Department's explanation is worth quoting at some length:

> Foregoing a contract with a utility pursuant to a cartel allocation scheme would mean giving up a substantial portion of the potential market. Some cartel members would be required to wait for a long period before their 'turn' for a contract came around. They might well fear that the cartel would dissolve before their turn arrived thus putting them in the position of having subsidized their fellow conspirators' monopoly gain without a corresponding monopoly gain for themselves.[33]

We believe that these considerations would apply even more strongly to the informal collusive agreements that are the stated concern of the Petitioners.

A third consideration which militates against anticompetitive conduct in the Southwest market is the fact that the Justice Department will have considerable influence over future Federal leasing policy. Section 15 of the Federal Coal Leasing Amendments Act requires the Justice Department to advise the Secretary of Interior as to "whether the issuance, renewal or readjustment of any coal lease would create or maintain a situation inconsistent with the antitrust laws." It is likely that coal producers, cognizant of the Justice Department's new role, will be very hesitant to undertake any activities that give any appearance of being anticompetitive.

It has been argued that the Form 423 reporting system may help to maintain a collusive agreement in the market for long term sales by serving as a policing mechanism. We find this argument unconvincing. For example, it would be very easy for a coal producer to cheat on a collusive agreement by initially charging a higher collusive price, but then lowering the price in later years by giving the buyer very favorable terms in the escalator clause of the contract. By doing so, the producer could capture a contract that he otherwise would not have obtained and his "price shading" would probably go undetected by his fellow conspirators for at least a year or two since the details of escalator clauses are not reported on Form 423. In a recent study, the MITRE Corporation listed some nineteen different provisions that have come into widespread use in long term contracts signed by electric utilities.[34] Any one of these provisions could have a significant impact on price depending on the provision. Yet, the Form 423 reporting system, as it is presently constituted, provides no information on any of these provisions. It therefore does not appear to us that the public availability of Form 423 data would be a significant factor contributing to the ability of coal producers to maintain a non-competitive price structure in the market for long term sales.

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[31] Ibid., p. 69 and P.A-49.
[32] Ibid., p. A-48.
[33] Ibid., p. A-48.

[34] MITRE Corporation, Analysis of Steam Coal Sales and Purchases, April, 1975, p. 85. (Report prepared for Office of Coal, Federal Energy Administration.)

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DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
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***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

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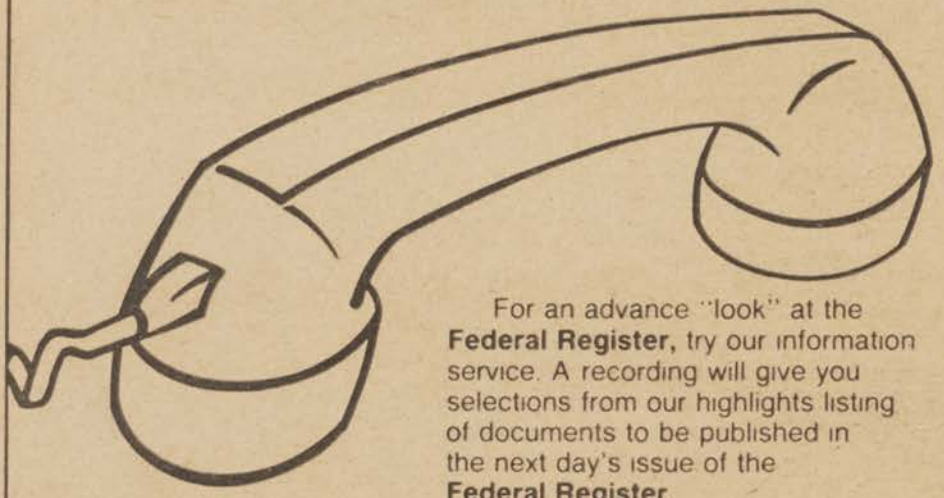
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