AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 44 No. 75
PAGES 22697-23064

federal register

Tuesday
April 17, 1979

Highlights

NOTE— The Reader Aids section appears at the end of this issue.

22697, 22699 **Refugee Assistance** Presidential determinations (2 documents)

22974 **Energy** DOE/ERA issues proposed rule on annual reports from States and nonregulated utilities on their progress in carrying out titles I and II of the Public Utility Regulatory Policies Act of 1978; comments by 6–18–79 (Part IV of this issue)

23043 **Health Care Proceedings** HEW/FDA proposes demonstration program for reimbursing participants in certain administrative proceedings; comments by 6–18–79 (Part V of this issue)

22704 **Illegal Aliens** Justice/INS sets forth new regulations under which vehicles, vessels, and aircraft used for transport may be seized and forfeited to the U.S.

22716 **Veterans** VA amends its regulations to implement the Veterans' Disability Compensation and Survivors' Benefits Act of 1978; effective 10–18–78

22701 **Agency Debt Collection** GAO/Justice rule to amend the Federal Claims Collection Standards by stating new general requirements and elaborating on certain existing requirements; effective 4–30–79

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies of 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Area Code 202–523–5240

Highlights

Vol. 44, No. 75

Tuesday, April 17, 1979

22817 **Emergency School Aid Act** HEW/OE gives notice of closing date for receipt of applications for Special Projects; closing date 6–11–79

22818 **Fund for the Improvement of Postsecondary Education** HEW/OE announces closing date for receipt of applications for new awards for fiscal year 1979; closing date 6–11–79

22722 **Veterans Loans** VA amends regulations relating to mobile home loans to authorize a loan guaranty of 50 percent of the loan amount not to exceed 17,500; effective 10–1–78

22712 **Banking** Treasury/Comptroller issues a final interpretive ruling on loans to foreign governments, their agencies, and instrumentalities; effective 5–17–79

22795 **Nitrates and Nitrites** USDA/FSQS gives notice of extension of time for submission of data; comments by 7–17–79

22755 **Diagnostic X-Ray Systems** HEW/FDA proposes to revoke certain provisions for assembly and reassembly; comments by 5–17–79

22746 **Improving Government Regulations** NRC seeks comments on the value and usefulness of revisions which would comply with E.O. 12044; comments by 6–18–79

22960 **Interstate Rail Carriers** EPA issues proposed noise emission standards for transportation equipment; comments by 6–1–79 (Part III of this issue)

22940 **Energy Conservation Measures** DOE establishes regulations for cost sharing grant programs for schools and hospitals and for buildings owned by units of local government and public care institutions; effective 4–17–79 (Part II of this issue)

22759 **Forest Service Programs** USDA/FS issues proposal on procedures for involving the public in the formulation of standards, criteria, and guidelines; comments by 6–18–79

22912 **Sunshine Act Meetings**

Separate Parts of This Issue

22940 **Part II, DOE**
22960 **Part III, EPA**
22974 **Part IV, DOE/ERA**
23044 **Part V, HEW/FDA**
23058 **Part VI, FHLBB**
23062 **Part VII, Interior/FWS**

Contents

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 1979

THE PRESIDENT

Administrative Orders

22697 Eastern Europe and Soviet Union, refugee assistance (Presidential Determination No. 79–7 of Mar. 20, (1979)

22699 Ethiopia, refugee assistance (Presidential Determination No. 79–8 of Mar. 27, 1979)

EXECUTIVE AGENCIES

Agriculture Department

See Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service; Food Safety and Quality Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

Animal and Plant Health Inspection Service

RULES

Livestock and poultry quarantine:

22709, 22710 Exotic Newcastle disease (4 documents)

Arts and Humanities, National Foundation

RULES

22728 Organization, procedure and availability of information

22730 Nondiscrimination:
Handicapped in federally assisted programs

NOTICES

Meetings:

22858 Arts and Artifacts Indemnity Panel

Census Bureau

NOTICES

22796 Neighborhood statistics program (1980 census)

Civil Aeronautics Board

RULES

Organization, functions, and authority delegations:

22715 Essential Air Services Division, Chief; authority delegation

NOTICES

Hearings, etc.:

22795 Southwest Airlines automatic market entry investigation

22795 United Air Lines, Inc.

Commerce Department

See Census Bureau; National Oceanic and Atmospheric Administration.

NOTICES

22797 Privacy Act; systems of records

Commodity Credit Corporation

PROPOSED RULES

Export programs:

22746 Breeding animals, intermediate credit export sales program

Comptroller of Currency

RULES

Rulings:

22712 Loans to foreign governments, their agencies, and instrumentalities

Defense Department

See also Engineers Corps

NOTICES

Meetings:

22799 Science Board task forces

22799 Women in Services Advisory Committee

Economic Regulatory Administration

PROPOSED RULES

Public Utility Regulatory Policies Act of 1978:

22974 States and nonregulated utilities; annual progress reports

NOTICES

Environmental statements; availability, etc.:

22797 Civic/Convention Center Complex; Little Rock, Ark.

Natural gas importation; petitions:

22801 Great Lakes Transmission Co.

Education Office

NOTICES

Grant applications and proposals, closing dates:

22817 Emergency school aid special projects program

22818 Postsecondary youth program

Energy Department

See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration.

RULES

Energy conservation program:

22940 Grants for schools, hospitals, etc.; final regulations

NOTICES

Meetings:

22799, 22800 Consumer Affairs Advisory Committee (2 documents)

Energy Information Administration

NOTICES

Meetings:

22800 American Statistical Association, Ad Hoc Committee on Energy Statistics

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

22798 Below Red River area, La.

22799 Holes Creek, West Carrollton, Ohio

Environmental Protection Agency
PROPOSED RULES
22761 Air programs; assessment and collection of noncompliance penalties; correction
Noise abatement programs:
22960 Transportation equipment; interstate rail carriers
Pesticides; tolerances in food:
22752 Propargite
NOTICES
Hearings:
22807 California State Motor Vehicle Pollution Control Standards
22808 2,4,5-T and Silvex; suspension of registration of certain uses
Pesticides, experimental use permit applications:
22807 American Cyanamid Co.
22807 Diamond Shamrock Corp.
Pesticides; temporary tolerances:
22806 1-(2-(2,4-Dichlorophenyl)-2-(2-propenyloxy) ethyl)-1*H*-imidazole
22806 *N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine

Federal Communications Commission
RULES
Radio broadcasting:
22738 Reregulation of television and radio broadcasting; correction
Radio stations; table of assignments:
22740 California
22741 Michigan
22741 New York
Television stations; table of assignments:
22742 Oregon
22743 Wisconsin
PROPOSED RULES
Radio stations; table of assignments:
22763 Nevada
Television stations; table of assignments:
22762 Montana
NOTICES
22810 FM broadcast applications ready and available for processing
22912 Meetings; Sunshine Act
22811 Television translator applications ready and available for processing
22809 World Administrative Radio Conference

Federal Contract Compliance Programs Office
PROPOSED RULES
22761 Compliance responsibility for equal opportunity employment; addition to preamble and extension of time
NOTICES
Contract sanctions:
22835 Loffland Brothers Co.

Federal Deposit Insurance Corporation
NOTICES
22912 Meetings; Sunshine Act

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities:
22751 Conservation activities; voluntary annual reporting; removal of requirement
NOTICES
Hearings, etc.:
22801 Alabama-Tennessee Natural Gas Co.
22801 Arkansas Louisiana Gas Co. et al.
22801 El Paso Natural Gas Co.
22802 Estes Lake Association
22802 Michigan Wisconsin Pipe Line Co.
22803 Montana-Dakota Utilities Co.
22803 Northwestern Public Service Co.
22803 Public Service Co. of Indiana, Inc.
22803 Jonesboro, La., town of
22804 Tucson Gas & Electric Co.
22804 Upper Peninsula Power Co.

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
23058 Conversion from mutual to stock form
NOTICES
22912 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
22912 Meetings; Sunshine Act

Federal Prevailing Rate Advisory Committee
NOTICES
22812 Meetings

Federal Reserve System
NOTICES
22912 Meetings; Sunshine Act

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
22867 Indemnity Insurance Company of North America

Fish and Wildlife Service
RULES
Endangered and threatened species:
23062 Bolson tortoise
NOTICES
22820–22822 Endangered and threatened species permits; applications (7 documents)
22822 Endangered and threatened species permits; applications; correction

Food and Drug Administration
PROPOSED RULES
Administrative practices and procedures:
23044 Reimbursement for participation in administrative proceedings
Human drugs:
22752 Estrogens; patient labeling
Radiological health:
22755 X-ray systems, diagnostic; assembly and reassembly provisions
NOTICES
Food additivies, petitions filed or withdrawn:
22816 Pfizer, Inc.
Meetings:
22812, 22814 Advisory committees, panels, etc. (2 documents)

Food and Nutrition Service
PROPOSED RULES
Food Stamp Program:
22746 State complaint procedure (correction)
22746 State agencies; performance reporting system (correction)

Food Safety and Quality Service
NOTICES
22769 Humanely slaughtered livestock; list of establishments
22795 Nitrates and nitrites in cured meat products; extension of time

Forest Service
PROPOSED RULES
22759 Forest service programs; standards, criteria and guidelines; public participation procedures
NOTICES
Environmental statements; availability, etc.:
22767 Okanogan National Forest, Tonasket Ranger District; Wash.
22767 Okanogan National Forest, Twisp Ranger District; Wash.
22767 Okanogan National Forest, Winthrop Ranger District; Wash.
22766 Wallowa-Whitman National Forest, forest land and resource management plan; Oreg.

General Accounting Office
RULES
22701 Federal claims collection; standards for the administrative collection of claims

General Services Administration
RULES
Procurement, Federal:
22725 ADP systems and services; validation of performance

Health, Education, and Welfare Department
See also Education Office; Food and Drug Administration; Human Development Services Office; National Institute of Occupational Safety and Health.
NOTICES
Meetings:
22817 Bilingual Education National Advisory Council

Hearings and Appeals Office, Energy Department
RULES
Oil; administrative procedures and sanctions:
22711 Applications for exception; ex parte contact restrictions

Heritage Conservation and Recreation Service
NOTICES
Historic Places National Register; additions, deletions, etc.:
22822 Alabama et al.

Historic Preservation, Advisory Council
NOTICES
22766 Meetings

Human Development Services Office
RULES
22728 Mentally retarded university affiliated facilities; grants for construction
22727 Undergraduate and graduate programs in social work; grants for expansion and development
22727 Vending stands for the blind on Federal property

Immigration and Naturalization Service
RULES
22704 Aliens, illegal transportation; seizure and forfeiture of vessels, vehicles, and aircraft

Interior Department
See Fish and Wildlife Service; Heritage Conservation and Recreation Service; Land Management Bureau; Reclamation Bureau.

International Trade Commission
NOTICES
Import investigations:
22824 Fish and shellfish from Canada

Interstate Commerce Commission
RULES
Railroad car service orders:
22744 Hopper cars, covered; distribution
PROPOSED RULES
Practice rules:
22765 Administrative appeals from Motor Carrier Board decisions
NOTICES
22902 Hearing assignments
Motor carriers:
22902 Permanent authority applications
22911 Permanent authority applications; correction
22892 Temporary authority applications
Petitions filings:
22911 National Tank Truck Carriers, Inc.
Railroad services abandonment:
22867 Los Angeles & Salt Lake Railroad Co.
22883 Mount Hood Railway
22872 Oregon Short Line Railroad Co.
22876 Oregon-Washington Railroad & Navigation Co.
22886 St. Louis Southwestern Railway Co.
22880 Spokane International Railroad

Justice Department
See Immigration and Naturalization Service; Law Enforcement Assistance Administration.

Labor Department
See Federal Contract Compliance Programs Office; Labor Statistics Bureau; Mine Safety and Health Administration; Occupational Safety and Health Administration.

Labor Statistics Bureau
NOTICES
Meetings:
22825 Labor Research Advisory Council Committees

Land Management Bureau
NOTICES
Applications, etc.:
22820 New Mexico (2 documents)
Environmental statements; availability, etc.:
22819 Paria Canyon, Paiute, and Vermillion Cliffs Wilderness, Ariz.

Withdrawal and reservation of lands, proposed, etc.:
22819 Alaska
22820 Washington

Law Enforcement Assistance Administration
NOTICES
Grants solicitation, competitive research:
22825 Child advocacy unit; Philadelphia Defenders' Association; evaluation

Mine Safety and Health Administration
NOTICES
22827 Mine safety and health standards; interagency agreement with OSHA
Petitions for mandatory safety standard modifications:
22826 Allied Chemical
22826 Extractors Inc.
22827 G.B. Corp.
22827 Kennecott Copper Corp.

National Aeronautics and Space Administration
NOTICES
Meetings:
22857 Space Systems and Technology Advisory Committee

National Institute for Occupational Safety and Health
NOTICES
22834 Employee protection; safety and health functions; Interagency agreement with OSHA

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
22744 Atlantic groundfish; gulf of Maine; fishery closure
NOTICES
Marine mammal permit applications:
22797 Oregon Department of Fish and Wildlife; correction

National Railroad Passenger Corporation
NOTICES
22913 Meetings; Sunshine Act

Nuclear Regulatory Commission
PROPOSED RULES
22746 Freedom of information; advance notice
NOTICES
Applications, etc.:
22858 Commonwealth Edison Co.
22858 Florida Power & Light Co.
22860 Wisconsin Electric Power Co. (2 documents)
22861 Wisconsin Public Service Corp.
22860 Wisconsin Public Service Corp. et al.
22859 Yankee Atomic Electric Co. (2 documents)
22913 Meetings; Sunshine Act

Occupational Safety and Health Administration
NOTICES
22834 Employee protection; safety and health functions; interagency agreement with NIOSH
22827 Mine safety and health standards; interagency agreement with MSHA
State plans; development, enforcement, etc.:
22830, 22832 Puerto Rico (3 documents)
22832 Utah
22833 Wyoming
Variance applications:
22833 General Motors and Chrysler Corp.; extension of comment period

Personnel Management Office
RULES
Excepted service:
22702 Agency for International Development
22703 Commerce Department; correction
22703 Energy Department
22703 Health, Education, and Welfare Department
22703 Labor Department

Postal Rate Commission
NOTICES
22861 Visits to postal facilities

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
22823 Municipal and Industrial System, Bonneville Unit, Central Utah Project, Utah
22823 North Loup Division, Nebr.

Rural Electrification Administration
PROPOSED RULES
Telephone borrowers:
22746 Central office equipment contract; bulletin

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
22715 Director, Divisions of Market Regulation et al.
NOTICES
Hearings, etc.:
22862 Elcor Corp.
22862 Life Insurance Co. of North America, et al.
Self-regulatory organizations; proposed rule changes:
22861 Depository Trust Co.
22866 Pacific Securities Depository Trust Co.
22865 Philadelphia Stock Exchange, Inc.

Small Business Administration
NOTICES
Disaster areas:
22866 California
22866 Iowa
Meetings, advisory councils:
22866 Helena

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
22768 Big Slough Watershed, Fla.
22768 California Lake Watershed, Fla.

Tennessee Valley Authority
NOTICES
22913 Meetings; Sunshine Act

Treasury Department
See Comptroller of Currency; Fiscal Service.

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
22716 Disability compensation and survivors' benefits; increase
Loan guaranty:
22722 Mobile homes
NOTICES
Committees; establishment, renewals, terminations, etc.:
22867 Cooperative Studies Evaluation Committee

Western Area Power Administration
NOTICES
Power rate adjustments:
22804 Central Valley Project, Calif.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 79–7 of March 20, 1979 22697
No. 79–8 of March 27, 1979 22699

4 CFR
101 22701
102 22701
104 22701

5 CFR
213 (5 documents) 22702, 22703

7 CFR
Proposed Rules:
271 (2 documents) 22746
272 22726
275 22746
1491 22746
1701 22746

8 CFR
274 22704

9 CFR
82 (4 documents) 22709, 22710

10 CFR
205 22711
455 22940
Proposed Rules:
9 22746
463 22974

12 CFR
7 22712
563b 23058

14 CFR
385 22715

17 CFR
200 22715

18 CFR
Proposed Rules:
2 22751

21 CFR
Proposed Rules:
10 23044
193 22752
301 22752
1000 22755

36 CFR
Proposed Rules:
216 22759

38 CFR
3 22716
36 22722

40 CFR
Proposed Rules:
66 22761
67 22761
201 22960

41 CFR
Ch. I 22725
Proposed Rules:
60–1 22761
60–2 22761
60–30 22761

45 CFR
20 22727
280 22727
415 22728
1100 22728
1151 22730

47 CFR
73 (6 documents) 22738, 22740–22743
Proposed Rules:
73 (2 documents) 22762, 22763

49 CFR
1033 22744
Proposed Rules:
1100 22765

50 CFR
17 23062
651 22744

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 1979

Presidential Documents

Title 3—
The President

Presidential Determination No. 79–7 of March 20, 1979

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, (the "Act") Authorizing the Use of Up to $1,130,000 of Funds Made Available From the United States Emergency Refugee and Migration Assistance Fund

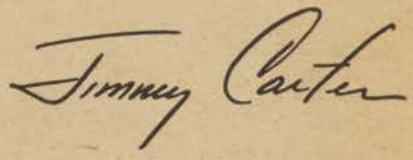
Memorandum for the Secretary of State

In order to meet unexpected urgent needs arising in connection with the resettlement of political refugees primarily from Eastern Europe and the Soviet Union carried out by American Voluntary Agencies, I hereby determine, pursuant to Section 2(c)(1) of the Act, that it is important to the national interest that up to $1,130,000 from the United States Emergency Refugee and Migration Assistance Fund be made available for grants to these agencies through the Department of State, toward resettlement expenses incurred with respect to refugees who entered the United States before October 1, 1978.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

The Determination shall be published in the **Federal Register.**

THE WHITE HOUSE,
Washington, March 20, 1979.



[FR Doc. 79–12049
Filed 4–13–79; 3:50 pm]
Billing code 3195–01–M

Presidential Determination No. 79–8 of March 27, 1979

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended, (the "Act") Authorizing the Use of $285,000 of Funds Made Available Under the United States Emergency Refugee and Migration Assistance Fund

Memorandum for the Secretary of State

In order to meet unexpected urgent needs of refugees who fled from Ethiopia to Sudan, I hereby determine, pursuant to Section 2(c)(1) of the Act, that it is important to the national interest that up to $285,000 from the United States Emergency Refugee and Migration Assistance Fund be made available for assistance to such refugees through the United Nations High Commissioner for Refugees.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

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

THE WHITE HOUSE,
Washington, March 27, 1979.

Jimmy Carter

[FR Doc. 79–12050
Filed 4–13–79; 3:51 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 1979

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.

GENERAL ACCOUNTING OFFICE

JUSTICE DEPARTMENT

4 CFR Parts 101, 102, 104

Agency Debt Collection Programs; Changes in Requirements

AGENCIES: General Accounting Office—Department of Justice.

ACTION: Final rule.

SUMMARY: This action, which amends the Federal Claims Collection Standards, states certain new general requirements and elaborates on certain existing requirements applicable to agency debt collection programs. These changes have been prompted by the growing problem of collecting debts owed to the Government. The changes should motivate debtors to pay more promptly, improve the efficiency and effectiveness of agency collection programs, and reduce the need for referring uncollectible debts to the Department of Justice for suit.

EFFECTIVE DATE: April 30, 1979.

FOR FURTHER INFORMATION CONTACT: Daniel P. Leary, Director of the Claims Division, U.S. General Accounting Office, Room 5858, 441 G Street, N.W., Washington, D.C. 20548, (202) 275–3102.

SUPPLEMENTARY INFORMATION: These changes have been prompted largely by the increasing concern within the Government about the adequacy of present collection systems and procedures for collecting the enormous inventory of debts owed to the Government. Agencies reported bad debt losses of $3 billion as of September 30, 1977—an increase of 35 percent over the prior year. This problem is described more fully in the Comptroller General's statement of December 18, 1978, before the Subcommittee on Taxation and Debt Management Generally of the Senate Finance Committee.

Debt collection in the Federal Government tends to be a slow and expensive process and increasing numbers of debt claims are being referred to the Department of Justice for suit. These regulatory changes will improve the effectiveness of agency collection efforts principally by adopting two practices that are common in the commercial world—charging interest on delinquent debts and on unpaid balances of debts being paid in installments and reporting delinquent debts to commercial credit bureaus.

The reasons for these amendments are as follows:

4 CFR 101.1 is revised to advise agencies that additional guidance and instructions are contained in the GAO Manual for guidance of Federal agencies.

4 CFR 102.2 is revised to specify that initial demands for payment should inform the debtor of the applicable policies for charging interest, as provided in the Treasury Fiscal Requirements Manual, and to provide for reporting delinquent accounts to credit bureaus. Informing debtors of these policies should prompt debtors to assign a priority to their obligations to the Federal Government comparable to that given to their other financial obligations. Additional minor changes allow for issuing demand letters more frequently than at 30-day intervals and provide that debtors who dispute their debt be requested to furnish available supporting evidence.

4 CFR 102.4 is a new requirement that agencies establish procedures for reporting delinquent debts to credit bureaus. This is an effective practice in the private sector that can be adopted by agencies to strengthen their collection programs.

4 CFR 102.11, regarding interest, includes a new reference to the requirements in the Treasury Fiscal Requirements Manual for charging interest on delinquent accounts. This policy should encourage debtors to give higher priority to repaying their Federal obligations.

4 CFR 102.12 is a new provision requiring agencies to analyze collection costs and pointing out potential uses of the data in agency collection programs.

4 CFR 102.14 encourages agencies to use automation to the extent cost effective and feasible. Debt collection activities are readily adaptable to automation and most agencies' collection programs are already automated to some degree. This provision should further encourage the present trend.

4 CFR 102.15 is a new provision stressing that efforts should be made to identify and deal with the causes of over-payments, delinquencies, and defaults.

4 CFR 104.2 is amended to include credit bureaus as a source of locator assistance.

Accordingly, 4 CFR Parts 101, 102, and 104 are amended as follows:

PART 101—SCOPE OF STANDARDS

1. 4 CFR 101.1 is amended to read as follows:

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

2. The table of sections for 4 CFR Part 102 is amended to read as follows:

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 Aggressive agency collection action.
102.2 Demand for payment.
102.3 Collection by offset.
102.4 Reporting delinquent debts to commercial credit bureaus.
102.5 Personal interview with debtor.
102.6 Contact with debtor's employing agency.

102.7 Suspension or revocation of license or eligibility.
102.8 Liquidation of collateral.
102.9 Collection in installments.
102.10 Exploration of compromise.
102.11 Interest.
102.12 Analysis of costs.
102.13 Documentation of administrative collection action.
102.14 Automation.
102.15 Prevention of overpayments, delinquencies, and defaults.
102.16 Additional administrative collection action.

Authority: Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

3. Section 102.2 is revised to read as follows:

§ 102.2 Demand for payment.

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which the payment is to be made (date due). The date due should be specified and, normally, should be not more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g., the statute of limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

§§ 102.4–102.12 Redesignated as §§ 102.5–102.11, 102.13, 102.16.

4. Sections 102.4, 102.5, 102.6, 102.7, 102.8, 102.9, 102.10, 102.11, and 102.12 are redesignated as 102.5, 102.6, 102.7, 102.8, 102.9, 102.10, 102.11, 102.13, and 102.16 respectively.

5. A new § 102.4 is added, reading as follows:

§ 102.4 Reporting delinquent debts to commercial credit bureaus.

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the date due specified in the initial notification, unless satisfactory payment arrangements are made by the date due. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which includes the following requirements: (a) promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureaus with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be reported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

6. Section 102.11 is revised as follows:

§ 102.11 Interest.

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract, or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See Rodgers v. United States, 332 U.S. 371.

7. A new § 102.12 is added, reading as follows:

§ 102.12 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

8. A new § 102.14 is added, reading as follows:

§ 102.14 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

9. A new § 102.15 is added, reading as follows:

§ 102.15 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

§ 104.2 [Amended]

10. 4 CFR 104.2 is amended by adding "; and credit bureaus" to the end of the second sentence.

Dated: March 19, 1979.

Elmer B. Staats,
Comptroller General of the United States.

Dated: April 5, 1979.

Griffin B. Bell,
Attorney General of the United States.

[FR Doc. 79-11832 Filed 4-16-79; 8:45 am]
BILLING CODE 1610-01-M
BILLING CODE 4410-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Agency for International Development

5 CFR Part 213

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the title of a position from Confidential Assistant to the Assistant Administrator (Africa) to Special Assistant to the Assistant Administrator (Africa) to more appropriately reflect the duties of the position.

EFFECTIVE DATE: March 23, 1979.

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

Accordingly, 5 CFR 213.3368(h)(1) is amended as set out below:

§ 213.3368 Agency for International Development.

* * * * *

(h) *Office of the Assistant Administrator for the Bureau of Africa.*

(1) One Special Assistant to the Assistant 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. 79–11913 Filed 4–16–79; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: This amendment corrects a document published on November 8, 1977 (42 FR 58151) which erroneously listed (w) Industry and Trade Administration and adds the listings to (m) Office of the Assistant Secretary for Industry and Trade.

EFFECTIVE DATE: April 17, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 632–4533.

Accordingly, 5 CFR 213.3314(w) is revoked and (m)(23), (24), (25), and (26) are added as set out below:

§ 213.3314 Department of Commerce.

* * * * *

(m) *Office of the Assistant Secretary for Industry and Trade.* * * *

(23) One Secretary (Steno) to the Deputy Assistant Secretary for Administrative and Legislative Policy.

(24) One Confidential Assistant, one Policy Analyst, and one Senior Policy Analyst to the Deputy Assistant Secretary for Trade Regulation.

(25) One Secretary to each of the following: Deputy Assistant Secretary for East-West Trade; Deputy Assistant Secretary for Field Operations; Deputy Assistant Secretary for Domestic Business Development; Deputy Assistant Secretary for International Economic Policy and Research; Deputy Assistant Secretary for Export Development; and Deputy Assistant Secretary for Trade Regulation.

(26) One Confidential Assistant to the Deputy Assistant Secretary for East-West Trade.

* * * * *

(w) 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. 79–11909 Filed 4–16–79; 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 Confidential Assistant to the Chairman (Office of the Secretary) to Confidential Assistant to the Chairman (Federal Energy Regulatory Commission) to reflect an organizational transfer. This position formerly existed at the Federal Power Commission and was subsequently transferred to the Department of Energy on September 30, 1977.

EFFECTIVE DATE: March 22, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3331(c)(1) is amended as set out below:

§ 213.3331 Department of Energy.

* * * * *

(c) *Federal Energy Regulatory Commission.*

(1) One Confidential Secretary and one Confidential Assistant to the Chairman.

(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. 79–11912 Filed 4–16–79; 8:45 am]

BILLING CODE 6325–01–M

---

5 CFR Part 213

Excepted Service; Department of Health, Education and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) changes the titles of certain positions at the Department of Health, Education and Welfare from two Special Assistants to the Deputy Assistant Secretary for Legislation (Congressional Liaison) to one Special Assistant to the Deputy Assistant Secretary for Legislation (Health) and to one Special Assistant to the Deputy Assistant Secretary for Legislation (Education) to more appropriately reflect the duties of the positions and to reflect organizational transfers, (2) revokes certain positions because the need for the jobs no longer exists and (3) excepts under Schedule C certain positions because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATES: Title changes and revocations—November 21, 1978; Director & Deputy Director, Congressional Liaison—February 16, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3316(f)(7) & (11) are amended; (f)(10) is revoked and (f)(15) is added as set out below:

§ 213.3316 Department of Health, Education and Welfare.

* * * * *

(f) *Office of the Assistant for Legislation.* * * *

(7) Two special Assistants to the Deputy Assistant Secretary for Legislation (Education).

* * * * *

(10) [Revoked].

(11) Two Special Assistants to the Deputy Assistant Secretary for Legislation (Health).

* * * * *

(15) One Director and one Deputy Director, Congressional Liaison.

(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. 79–11911 Filed 4–16–79; 8:45 am]

BILLING CODE 6325–01–M

---

5 CFR Part 213

Excepted Service; Department of Labor

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the title of a position from Confidential Assistant to the Assistant Secretary for Policy Evaluation and Research to Private Secretary to the Assistant

Secretary for Policy Evaluation and Research to more appropriately reflect the duties of the position.

EFFECTIVE DATE: April 2, 1979.

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

Accordingly, 5 CFR 213.3315(a)(3) is amended as set out below:

§ 213.3315 Department of Labor.

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

(3) One Private Secretary to each Assistant Secretary of Labor appointed by the President.

(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. 79–11910 Filed 4–16–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274

Seizure and Forfeiture of Vehicles, Vessels and Aircraft

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final Rule.

SUMMARY: This Final Rulemaking Order Sets forth new regulation of the immigration and Naturalization Service to provide rules under which vehicles, vessels, and aircraft used to transport aliens into the United States in violation of law may be seized by authorized and designated immigration officers and forfeited to the United States. These new regulations also provide that if a seized conveyance was stolen, or the owner had no knowledge of the illegal activity, it shall be returned to the owner expeditiously. These new regulations are necessary and intended to comply with the directive of the Congress that the Attorney General promulgate regulations implementing the above statue which provide for the prompt return to the owner of conveyances which are not in fact subject to seizure and forfeiture under this statute.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Paul W. Schmidt, Deputy General Counsel, Immigration and naturalization Service. Telephone: (202) 633–3195 or James G. Hoofnagle, Jr., Instructions Officer, Immigration and naturalization Service. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: On November 2, 1978, the President signed Pub. L. 95–582 into law. Section 2 of that statute amends section 274 of the Immigration and Nationality Act to provide that any vehicle, vessel, or aircraft which is used in the commission of a violation of subsection (a) of section 274 of the Act shall be subject to seizure and forfeiture except when the owner, master, or other person in charge of the vehicle, vessel, or aircraft was not, at the time of the alleged illegal act, a consenting party or privy thereto or where the illegal act occurred while the vessel, vehicle, or aircraft was in the illegal possession of any person other than the owner, as established by the criminal laws of the United States, or of any States. This statute further provides that should the conveyance be improperly seized, it shall be expeditiously returned to the owner, master, or other person in charge thereof, and the Government shall not charge any expense incidental to the seizure to that individual. This statute also provides that all provisions of law relating to the seizure, forfeiture, and disposition of vessels, vehicles, and aircraft for violations of customs law shall apply to violations of the provisions of this statute subject to the exceptions noted.

On January 29, 1979, at 44 FR 5671, the Service published proposed rules in the **Federal Register** to implement the provisions of Pub. L. 95–582.

In response to the notice of proposed rulemaking, the Service received one oral and three written representations.

A general criticism of the regulations was that they appeared to shift the burden of proof to the persons seeking to reclaim the seized vehicle.

These regulations were drafted to provide fair and equitable procedures for the determination of claims. Care has been taken to insure that only vehicles which are in fact subject to seizure under the law will actually be seized, and that the owner will have every opportunity to present his case against seizure. Also, the regulations provide for the expeditious return to the owner of improperly seized vehicles. We note that the customs laws, which are adopted by reference in new § 274(b)(4) of the Act, provide that once the Government has shown probable cause for institution of a forfeiture proceeding, the burden of proof shifts to the party claiming the property. See 19 U.S.C. 1615. Therefore, we see no need to change the general structure of these regulations, which parallel to the extent possible, existing regulations of the Department of Justice and Department of Treasury which are applicable to seizures of conveyances under the customs and narcotics laws.

There was criticism of proposed 8 CFR 274.1(a) which establishes a presumption that a person knows of illegal activity if the facts and circumstances are such that a person of reasonable diligence would be expected to know of the illegal activity. One commentator suggested that such a presumption was so vague as to be unconstitutional.

The presumption set forth in proposed 8 CFR 274.1(a) is reasonable. Often, it will be impossible for the Government to obtain direct evidence from the owner as to his degree of knowledge. In such cases, the Government necessarily must be allowed to derive reasonable inferences as to the scope of knowledge from the facts and circumstances surrounding the illegal activities. This regulation does no more than incorporate the normal rule for proof of knowledge by circumstantial evidence.

Another comment was critical of the use of arrest records under proposed 8 CFR 274.1(g) in determining whether a person had a record or reputation for violating laws for related crimes. The definition contained in the regulation is reasonable and is basically a restatement of the definition contained in 28 CFR 9.2(j), the Department of Justice regulation applicable to the processing of civil forfeitures under customs and narcotics laws.

There was an objection to the delegation of seizure authority to all immigration officers. We see no impropriety in such a delegation. The Attorney General's authority under the Immigration and Nationality Act may be delegated to any Government employee as he sees fit. Immigration officers are the general class of employees designated under section 101(a)(38) of the Act to perform general line enforcement functions under the Act.

There was also criticism of the provision for a personal interview set forth in proposed 8 CFR 274.5(b) because the interview provided is with an officer other than the one who initially encountered the conveyance.

This provision is analogous to the provision in 8 CFR 287.3 for examination of an alien arrested without a warrant by an officer other than the arresting officer. We believe that this interview procedure will protect the interests of both the owner and the Government by providing an early opportunity for presentation of evidence which may have been overlooked or unavailable at the time seizure was authorized. We feel that an officer who is not personally

involved in the original encounter with the conveyance would be in the best position to conduct this review. Nothing in the regulation precludes an owner from talking to the officer who originally encountered the conveyance.

One oral and one written representation suggested that airlines engaged in "air transportation" be excluded from coverage. Such an exclusion is both unwarranted by the statutory language and unnecessary, since both the statute and the regulations contain ample protections for innocent owners. One commentator basically acknowledged this but felt that even greater protections were needed to prevent an improper seizure of an aircraft by an immigration officer who might misconstrue the law and regulations relating to protection of innocent owners. The possibility raised by these comments should and will be averted by appropriate instructions and guidance to field officers. A specific exception to seizure authority for commercial aircraft will not be created in these regulations.

The question was also raised as to the authority for the 72-hour temporary holding period provided in proposed 8 CFR 274.1(k) which is to allow the Service to ascertain ownership of the conveyance and whether or not it is subject to seizure. This provision is necessary to allow the INS to effectuate the congressional purpose of seizing only those conveyances which are properly subject to seizure under the law. This provision protects the interests of both the owner and the Government. The 72-hour period is a maximum, and proposed 8 CFR 274.5(a) requires the INS to act as expeditiously as possible to determine ownership and whether or not the vehicle is subject to seizure. Moreover, temporary holding does not preclude the owner from reclaiming the vehicle up until the time the Service declares that a seizure under the law has occurred. Therefore, we see no reasons for changing proposed 8 CFR 274.1(k).

It was suggested that we specify in the regulations the method by which notice would be effected. This is unnecessary, because existing 8 CFR 103.5a already sets forth general procedures for the service of notification required under the regulations. The method for effecting notice will also be addressed in Service operations instructions.

Another suggestion was that the regulations specifically state that the U.S. Attorney has discretion to review each judicial forfeiture case referred by the Service to determine the appropriateness of filing condemnation proceedings. We believe that such an exercise of prosecutorial discretion is an inherent power of the U.S. Attorney and need not be specified in Service regulations.

One commentator felt that the first sentence of proposed 8 CFR 274.13(b) was confusing. We have rewritten it for clarity.

A commentor also believed that portions of proposed 8 CFR 274.14(a) were vague in that the date of mailing the notice of seizure should be specified as the date from which the 30 day period for filing a petition would run. We have modified this section to conform to 8 CFR 103.5a relating to service of notification by the Service. Under 8 CFR 103.5a(b) service by mail adds three days to the prescribed period for response.

Another comment suggested that proposed 8 CFR 274.15 should be amended to specify that investigation of petitions in cases referred to the U.S. Attorney should be conducted by the Service, since the U.S. Attorney has no independent investigative resources. It was pointed out that this practice would conform to that set forth in 28 CFR 9.3(b). We believe that this suggestion is well taken and have adopted it into the final version of 8 CFR 274.15.

A suggestion was made that the Government could minimize its possible expenses under proposed 8 CFR 274.5(c) by agreeing to pay the owner's expenses of transporting the vehicle back to the place of seizure if requested by the owner. This would eliminate possible claims for damage in transit. In the alternative, the Government could agree to transport the vehicle if the owner executed a release/waiver of liability. We have considered this suggestion and believe that 8 CFR 274.5(c) as proposed is the most efficient way for the Government to carry out its obligations under section 274(b)(2) of the Act. In light of the wording of section 274(b)(2), we do not believe that the Government can require a release of liability as a condition to transportation of the vehicle back to the place of seizure if requested by the owner.

Another suggestion was that proposed 8 CFR 274.12 be amended to include time limits for decision on a petition and provision for a written waiver by a petitioner of simultaneous judicial forfeiture proceedings. The filing of a claim for administrative relief, in and of itself, does not relieve the Government of its obligation promptly to afford a claimant an opportunity for a judicial hearing on the propriety of the forfeiture. We do not believe that anything in the proposed regulations is inconsistent with this general principle. We believe that waiver provisions could be worked out on a case by case basis with the issuance of operations instructions if necessary. We do not believe that it is necessary or appropriate to put a specific time limit in the regulations for acting on petitions.

Finally, a commentor believed that the term "proceeds of sale" as used in proposed 8 CFR 274.16 should be defined in the regulations in order to foreclose any possible argument by a lending institution that it is entitled to recover the full amount of the lien regardless of the amount received at sale. We believe that it is clear, without further definition, that the term "proceeds of sale" refers to the money received by the Government upon the sale of the conveyance. The floor debates preceding the enactment of section 274(b) clearly indicate that Congress did not intend that lending institutions have their interests satisfied over and above the amount received at sale.

Accordingly, the regulations will be adopted as proposed, but with the following minor changes:

1. Proposed 8 CFR 274.5(b) has been amended to provide the owner of the vehicle shall be informed that he may request a personal interview with an immigration officer within 72 hours after service of notice of seizure, rather than within 72 hours after receipt of notice of seizure. This brings 8 CFR 274.5(b) into conformity with 8 CFR 274.14(a).

2. Proposed 8 CFR 274.13(b) regarding straw purchase transactions has been redrafted for clarity.

3. Proposed 8 CFR 274.14(a) has been revised to provide that in order for a petition for mitigation of forfeiture to be timely filed, it must be filed within 30 days of service of the notice of seizure.

4. Proposed 8 CFR 274.15 will be amended by adding a new subparagraph (b) to require the regional commissioner to conduct an appropriate investigation into the petitions for mitigation and remission submitted to the U.S. Attorney.

In the light of the foregoing, Chapter I of Title 8 of the Code of Federal Regulations is hereby amended as set forth below.

In Part 274 the title of the Part and § 274.1 are revised, and §§ 274.2—274.16 are added to read as follows:

PART 274—SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT

Sec.

274.1 Definitions.
274.2 Officers who will make seizures.
274.3 Custody and other duties of the regional commissioner.
274.4 Conveyances subject to seizure.
274.5 Return to owner of improperly seized conveyances; opportunity for personal interview.
274.6 Appraisal.
274.7 Notice to registered owner and lien holder of seizure.
274.8 Advertisement.
274.9 Requirements as to claim and bond.
274.10 Summary forfeiture.
274.11 Judicial forfeiture.
274.12 Petitions for remission or mitigation of forfeiture
274.13 Provisions applicable to particular situations.
274.14 Time for filing petitions.
274.15 Handling of petitions.
274.16 Holder of a valid lien or other third party interest in a vehicle.

Authority: The provisions of §§ 274.1–.16 are issued under section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)), as amended by Pub. L. 95–582 (92 Stat. 2479), and Sec. 103 of the Act (8 U.S.C. 1103).

§ 274.1 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "consenting party or privy to the illegal act" means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person of reasonable diligence would be expected to know of the illegal activity.

(b) The term "conveyance" means a vessel, vehicle, or aircraft as used in section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. However, an immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle subject to seizure.

(c) The term "custodian" means the regional commissioner who under § 274.3 has been designated to receive and maintain in storage all conveyances seized pursuant to the Act.

(d) The term "lienholder" means a person who holds a security interest in a conveyance.

(e) The term "owner" means the person who holds primary and direct title to the conveyance, as opposed to a person who holds a security interest in the conveyance.

(f) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(g) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of such conviction, all of which occurred more than ten years prior to the date the petitioner acquired his interest in the seized property, shall not be considered a record: *Provided, however,* That two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further,* That the regional commissioner may, in his discretion, consider as constituting a record, an arrest or series of arrests in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(h) The term "related crime" means any crime related to the illegal bringing in, harboring, transportation, entry, reentry, or importation of aliens.

(i) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(j) The term "regional commissioner" means the regional commissioner of the Immigration and Naturalization Service.

(k) The term "seizure" means the act of taking the conveyance into the custody of the Service for the express purpose of forfeiting it in accordance with the provisions of section 274(b) of the Act. Nothing contained in this part shall be construed as prohibited an immigration officer from holding the conveyance temporarily, not to exceed 72 hours, for the purpose of investigating the ownership of the conveyance in order to determine whether such conveyance is subject to seizure under section 274(b)(1) of the Act. Such temporary holdings shall not constitute a seizure within the meaning of section 274(b)(1) of the Act, and no cost shall be incurred by the Government under section 274(b)(2) of the Act by reason of such temporary holding. Such temporary holding shall be without prejudice to the right of the owner to regain possession of the vehicle from the Service up until the time when a seizure under this part occurs.

(l) The term "valid lien or other third party of interest" as used in section 274(b)(2) of the Act and this part means a security interest in a vehicle which is held by a person who establishes that he meets the minimum requirements for remission set forth in § 274.12(e), and whose petition for remission submitted under this part has been granted.

(m) The term "attorney fees associated with such seizure and forfeiture" as used in § 274(b)(2) of the Act and this part means Government attorney fees which would otherwise be chargeable as an item of cost to a person seeking to reclaim the conveyance.

(n) The term "costs of transportation" as used in § 274(b)(2) of the Act and this part refers solely to costs of transportation of the conveyance which was done at the request of the U.S. Government and was directly related to the seizure. It shall not include any costs incurred by an owner in transporting the conveyance from the place where the Government makes it available for return to him in accordance with § 274.5 of this part.

(o) Any term not defined in this section shall have the definition set forth in section 101 of the Act and in § 1.1 of this chapter.

§ 274.2 Officers who will make seizures.

For the purpose of carrying out the provisions of section 274(b) of the Act, all immigration officers are authorized and designated to seize such conveyances as may be subject to seizure thereunder.

§ 274.3 Custody and other duties of the regional commissioner.

An officer seizing a conveyance under the Act shall store the conveyance in a location designated by the custodian, generally in the judicial district of the seizure. The regional commissioners are designated as custodians to receive and maintain in storage all conveyances seized pursuant to the Act. The regional commissioners are also authorized to dispose of any conveyances pursuant to the Act and any other applicable statutes or regulations relative to disposal, and to perform such other duties (not inconsistent with the provisions of the Act) regarding such seized conveyances as are imposed on the district directors of the U.S. Customs Service with respect to seizures under the Customs law, including the maintenance of appropriate records concerning the temporary detention, seizure and disposition of seized vehicles.

§ 274.4 Conveyances subject to seizure.

Generally, any conveyance which an immigration officer has probable cause to believe has been used in the commission of a violation of section 274(a) of the Act may be subject to seizure. However, a conveyance which has been used in a violation of section

274(a) of the Act is *not* subject to seizure if:

(a) The owner, master, or other person in charge of the conveyance was not a consenting party or privy to the illegal act; or

(b) The alleged illegal act occurred while the conveyance was in the illegal possession of someone other than the owner as established by the criminal laws of the United States or of any state (as defined in section 101(a)(36) of the Act).

§ 274.5 Return to owner of improperly seized conveyances; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance held temporarily, in accordance with § 274.1(k) of this part, in order to determine whether such conveyance is subject to seizure under section 274(b)(1) of the Act.

(b) The owner of a conveyance seized hereunder shall be informed that he may, within 72 hours after service of notice of seizure, request a personal interview with an immigration officer (other than the officer who initially encountered the conveyance) at which time the owner may present any evidence and arguments that he might have that the conveyance was not properly seized. If such officer determines that the conveyance was not subject to seizure, the conveyance shall be returned to the owner without any expense (including the types of expenses set forth in paragraph (c)).

(c) If at any time after a seizure has taken place, the regional commissioner finds that the conveyance was not in fact subject to seizure, the regional commissioner shall immediately notify the owner of the conveyance by letter, return receipt requested, that the conveyance is available for return to him in accordance with the provisions of section 274(b)(2) of the Act. The conveyance shall be made available to the owner at the place of storage or place of seizure, whichever the owner may request. In such cases, the owner shall not incur any expenses, including costs of transportation, storage, damage, and attorney's fees associated with the seizure and forfeiture. In the event that the conveyance involved is the subject of judicial forfeiture proceedings instituted in accordance with section 274(b) of the Act and § 274.11 of this part, the regional commissioner shall immediately notify the U.S. Attorney that the conveyance is required to be returned to the owner in accordance with section 274(b)(2) of the Act; and that judicial forfeiture proceedings must be terminated. The notice to the owner shall also state that if the conveyance remains unclaimed for 60 days following the receipt of the notice provided in this paragraph, it shall be considered to be voluntarily abandoned to the government, and the regional commissioner shall dispose of such conveyance in accordance with the provisions of 40 U.S.C. 304g.

§ 274.6 Appraisal.

The custodian shall appraise the conveyance to determine the domestic value at the time and place of seizure. The domestic value shall be considered the retail price at which such or similar conveyance is freely offered for sale. If there is no market for the conveyance at the place of seizure, the domestic value shall be considered the value in the principal market nearest the place of seizure.

§ 274.7 Notice to registered owner and lienholder of seizure.

Whenever a seizure takes place, notice shall be given to the registered owner(s) and any known lienholder(s) notifying them of the seizure of the conveyance and the contemplated forfeiture. Such notice shall be accompanied by copies of the applicable regulations, section 274 of the Act, and the proposed advertisement if such advertisement is required under § 274.8 of this part. The owner shall be informed of the provisions of § 274.5(b).

§ 274.8 Advertisement.

(a) If the appraised value does not exceed $10,000, the custodian shall cause a notice of the seizure and of the intention to forfeit and sell or otherwise dispose of the conveyance to be published once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the seizure occurred. A copy of this notice shall be sent to the registered owner(s) of the conveyance and to any known lienholder(s) in accordance with § 274.7 of this part.

(b) The notice shall: (1) Describe the conveyance seized and show the motor and serial numbers, if any; (2) state the time, cause, and place of seizure; and (3) state that any person desiring to claim the property may, within 20 days of the date of first publication of the notice, file with the custodian a claim to the conveyance and a bond with satisfactory sureties in the sum of $250; and (4) state that a petition for remission or mitigation may be filed with the regional commissioner in accordance with § 274.12 of this part.

§ 274.9 Requirements as to claim and bond.

(a) The bond shall be rendered to the United States, with sureties to be approved by the custodian, conditioned that in case of condemnation of the conveyance the obligor shall pay all costs and expenses of the proceedings to obtain such condemnation. If a person certifies under oath that he is unable to pay the $250 bond to obtain a judicial determination of forfeiture, the regional commissioner may waive the bond requirement. When the claim and bond are received by the custodian, he shall, after finding the documents in proper form and the surety satisfactory, immediately transmit the documents, together with a description of the conveyance and a complete statement of the facts and circumstances surrounding the seizure, to the United States Attorney for the judicial district in which the seizure was made for the purpose of proceeding to a condemnation of the conveyance in the manner prescribed by law. If the documents are not in satisfactory condition when first received, the person claiming the conveyance and furnishing the bond shall be advised by letter as to the inadequacy of the documents and advised that he has 20 days from the date of the letter to correct the documents. If correction is not made within the time allowed, the documents may be treated as of no effect and the case shall proceed as though they had not been tendered.

(b) The filing of the claim and the posting of the bond does not entitle the claimant to possession of the conveyance. However, it does stop the summary forfeiture proceedings. The bond posted to cover costs may be in cash, certified check, or on Treasury Department Form 171 with satisfactory sureties. The costs and expenses secured by the bond are such as are incurred after the filing of the bond including storage costs, safeguarding, court fees, marshal's costs, etc.

§ 274.10 Summary forfeiture.

If the appraised value does not exceed $10,000, and a claim and bond are not filed within the 20 days previously mentioned, the custodian may declare the conveyance forfeited. The custodian shall prepare the declaration of forfeiture and forward it to the Commissioner as notification of the action he has taken. Thereafter, the conveyance shall be retained in the custodian's region or delivered elsewhere for official use, or otherwise disposed of, in accordance with the

official instructions received by the custodian.

§ 274.11 Judicial forfeiture.

If the appraised value is greater than $10,000, or a claim and satisfactory bond have been received for a conveyance appraised at $10,000 or less, the custodian shall immediately transmit a description of the conveyance and a complete statement of the facts and circumstances surrounding the seizure to the U.S. Attorney for the judicial district in which the seizure was made for the purpose of instituting condemnation proceedings. The U.S. Attorney shall also be furnished the newspaper advertisement if such advertisement was required by § 274.8.

§ 274.12 Petitions for remission or mitigation of forfeiture.

(a) Any person having a legal or equitable interest in any conveyance which has been seized, or forfeited either summarily or by court proceedings, may file a petition for remission or mitigation of the forfeiture. Such petition shall be filed in triplicate with the regional commissioner having jurisdiction over the judicial district in which the seizure occurred. The petition shall be addressed to the regional commissioner if the conveyance is subject to summary forfeiture pursuant to § 274.10, and addressed to the Attorney General if the conveyance is subject to judicial forfeiture pursuant to § 274.11. The petition must be executed and sworn to by the person alleging interest in the conveyance.

(b) The petition shall include the following: (1) A complete description of the conveyance, including motor and serial numbers, if any, and the date and place seizure; (2) the petitioner's interest in the conveyance, which shall be supported by bills of sale, contracts, or other satisfactory evidence; and (3) the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(c) When the petition is for the restoration of the proceeds of sale, or for value of the conveyance placed in official use, it must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration of condemnation of forfeiture and was in such circumstances as prevented him from knowing of the same.

(d) If the petitioner is the owner of the vehicle, and establishes that he was not a consenting party or privy to the illegal act, or that the alleged illegal act occurred while the conveyance was in the illegal possession of someone other than the owner as established by the criminal laws of the United States or of any state, the procedures relating to petitions for remission or mitigation shall be inapplicable, and the mandatory return provisions of § 274.5(c) shall apply instead.

(e) The regional commissioner shall not remit a forfeiture unless the petitioner:

(1) Establishes a valid, good faith interest in the seized conveyance;

(2) Establishes that he at no time had any knowledge or reason to believe that the conveyance in which he claims an interest was being or would be used in a violation of the law; and

(3) Establishes that he at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any state for related crime; and

(4) Establishes that he has taken all reasonable steps to prevent the illegal use of the conveyance.

§ 274.13 Provisions applicable to particular situations.

(a) *Mitigation.* In addition to his discretionary authority to grant relief by way of complete remission of forfeiture, the regional commissioner may, in the exercise of his discretion, mitigate forfeitures of seized conveyances. This authority may be exercised in those cases where the petitioner has not met the minimum conditions for remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied, but the overall circumstances are such that, in the opinion of the regional commissioner, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) *Straw purchase transactions.* A person who purchases in his own name a conveyance for another who has a record or reputation for related crimes is a straw purchaser. If a lienholder knows or has reason to believe that the purchaser of record is a straw purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of § 274.12(e) as to both the purchaser of record and the real purchaser. This rule shall also apply where money is borrowed on the security of property held in the name of the straw purchaser for the real purchaser.

(c) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the regional commissioner may deny relief if there are unusual circumstances present which, in his judgment, provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be contrary to the interests of justice.

§ 274.14 Time for filing petitions.

(a) In order to be considered as timely filed, a petition for remission or mitigation of forfeiture should be filed within 30 days of the service of the notice of seizure. If a petition for remission or mitigation of forfeiture has not been received within 30 days of service of the notice of seizure, the property will either be placed in official government service or sold as soon as it is forfeited. Once the property is placed in official use, or is sold, a petition for remission or mitigation of forfeiture can no longer be accepted.

(b) A petition for restoration of proceeds of sale, or for the value of property placed in official use, must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

§ 274.15 Handling of petitions.

(a) Upon receipt of a petition, the regional commissioner shall request an appropriate investigation. If the petition involves a case which has been referred to the U.S. Attorney for institution of court proceedings, the regional commissioner shall transmit the petition to the U.S. Attorney for the judicial district in which the seizure occurred. He shall notify the petitioner of this action.

(b) The regional commissioner shall initiate a Service investigation into the merits of every petition transmitted to the U.S. Attorney, and shall promptly submit a report thereon to the U.S. Attorney.

§ 274.16 Holder of a valid lien or other third party interest in a vehicle.

In the event that a vehicle is forfeited and sold, the holder of a valid lien or other third party interest (as defined in § 274.1(l)) in the vehicle shall have such interest satisfied without expense. However, the money paid to such interest-holder shall not exceed the proceeds of the sale, or in the case of a vehicle placed in official use, the appraised value of the vehicle.

Effective date: The amendments contained in this order become effective on May 17, 1979.

Dated: April 12, 1979.

Leonel J. Castillo,

Commissioner of Immigration and Naturalization.

[FR Doc. 79-11927 Filed 4-16-79; 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 Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of this amendment is to quarantine an additional portion of Orange County in California and a portion of Cook County in Illinois because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in Orange County, California, on April 7, 1979, and in Cook County, Illinois, on April 6, 1979. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine additional portions of Orange County in California, and a portion of Cook County in Illinois.

EFFECTIVE DATE: April 12, 1979.

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

SUPPLEMENTARY INFORMATION: This amendment quarantines additional portions of Orange County in California, and a portion of Cook County in Illinois, because of the existence of exotic Newcastle disease in such areas. 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 apply to the quarantined areas.

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

§ 82.3 [Amended]

1. In § 82.3(a)(1), relating to the State of California, a new paragraph (viii) relating to Orange County is added to read:

(1) *California.*

* * * * *

(viii) The premises of Animals Etc., 18333 Lemon Drive, Yorba Linda, Orange County.

* * * * *

2. In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Illinois and a new paragraph (a)(6) relating to the State of Illinois is added to read:

* * * * *

(6) *Illinois.* The premises of Animal World, 7525 N. Harlem Avenue, Niles, Cook County.

(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 imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, from the quarantined areas, and, therefore, must be made effective immediately to accomplish its purpose in the public interest. 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 the amendment effective less than 30 days after publication in the **Federal Register.**

Done at Washington, D.C., this 12th 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 possibility of the spread of exotic Newcastle disease into other States or Territories of the United States from the quarantined areas is severe enough to constitute an emergency which warrants the publication of this quarantine without waiting for public comment. This amendment, as well as the complete regulations, 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.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-11886 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-34-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 Los Angeles 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 released from quarantine.

EFFECTIVE DATE: April 12, 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 Los Angeles 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 area released.

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 (vi) relating to Los Angeles 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 12th 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, MD 20782, 301–436–8695.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-11887 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-34-M

---

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 Los Angeles 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 released from quarantine.

EFFECTIVE DATE: April 10, 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 Los Angeles 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 area released.

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 (iii) relating to Los Angeles 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 10th 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, MD 20782, 301–436–8695.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-11888 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-34-M

---

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Forsyth County in North Carolina because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in Forsyth County on April 6, 1979. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine a portion of Forsyth County in North Carolina.

EFFECTIVE DATE: April 11, 1979.

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

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Forsyth County in North Carolina because of the existence of exotic Newcastle disease in such area. 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 apply to the quarantined area.

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

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of North Carolina and a new paragraph (a)(5) relating to the State of North Carolina is added to read:

§ 82.3 [Amended]

* * * * *

(5) *North Carolina.* The premises of Berry Water Gardens, Inc., Berry

Garden Road, Kernersville, Forsyth County.

(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 imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, and, therefore, must be made effective immediately to accomplish its purpose in the public interest. 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 the amendment effective less than 30 days after publication in the **Federal Register.**

Done at Washington, D.C., this 11th 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 Dr. J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the spread of exotic Newcastle disease into other States or Territories of the United States from the quarantined area is severe enough to constitute an emergency which warrants the publication of this quarantine without waiting for public comment. This amendment, as well as the complete regulations, 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.

Norvan L. Meyer,

Acting Deputy Administrator Veterinary Services.

[FR Doc. 79-11889 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

10 CFR Part 205

Administrative Procedures Regarding Applications for Exception; Amendment of Ex Parte Rule

AGENCY: Department of Energy, Office of Hearings and Appeals.

ACTION: Final Rule.

SUMMARY: This rule amends the portion of the recent Final Rule regarding Applications for Exception which deals with ex parte contacts. The amendment is intended to make it clear that the restriction on ex parte contacts in rules issued on March 14, 1979 pertains only to communications by a party or participant with a DOE official in a contested exception proceeding. The rule also makes it clear that the restriction is designed to apply only after a Proposed Decision and Order has been issued and applies only to communications by a person who is not employed by the Department of Energy with an official of the DOE who is participating or will participate in the decision to be reached on the Proposed exception determination. The restriction in no event applies to communications within the Department.

EFFECTIVE DATE: Upon the date of publication (April 17, 1979) with respect to all pending proceedings involving Applications for Exception.

FOR FURTHER INFORMATION CONTACT:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M St., N.W., Washington, D.C. 20461, Telephone: (202) 254–9681.

Peter Bloch, Assistant Director, Office of Hearings and Appeals, Department of Energy, 2000 M St., N.W., Washington, D.C. 20461, Telephone: (202) 254–8606.

SUPPLEMENTARY INFORMATION: On September 14, 1977, the Federal Energy Administration issued a Notice of Proposed Rulemaking concerning procedures governing Applications for Exception. 42 FR 47210 (September 20, 1977), *CCH Federal Energy Guidelines* Par. 41,083 (1977). This notice and comment procedure was not legally required for rules of agency procedure. See 5 USC Sec. 553(b)(A) and Department of Energy Organization Act, Sec. 501, *CCH Federal Energy Guidelines* Par. 10,332 (1978) at p. 10,330. Nonetheless, numerous comments regarding the Proposed Rule were received and analyzed, and a final rule was published on March 20, 1979, 44 FR 16884.

Subsequent to the issuance of the final rule, the Office of Hearings and Appeals became aware that Section 205.69E entitled "Ex Parte Communications: Prohibition and Disclosure Requirement" should be clarified to remove any possible misinterpretation that the rule applies to communications between employees of the Department of Energy. In initially promulgating the rule, we had viewed the use of the term "ex parte" as implicitly connoting communications by a party only. The term itself—i.e., from one side—provides direct support for that position. Since an office of the Department has never been a party in an exception proceeding, the term was not viewed as applying to any communications within the Department. Nevertheless, in order to avoid any possible ambiguity we have decided to amend the rule to make it absolutely clear that the restriction on ex parte communications applies only to communications by a party or another person outside the DOE who has filed a notice of intent to participate pursuant to Section 205.59 of the Regulations. This restriction in no way affects communications between employees of the Department of Energy. The rule as amended also makes it clear that the restriction on ex parte communications only relates to contested exception proceedings and is applicable only after a Proposed Decision and Order has been issued.

In accordance with Section 404 of the DOE Organization Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking which was issued on September 20, 1977. The Commission has previously notified the Office of Hearings and Appeals that it has decided not to exercise its discretion to determine that the proposed regulations would significantly affect any function within its jurisdiction under sections 402(a)(1), (b) and (c)(1) of the DOE Organization Act.

Public comment on this Amendment is invited. Since this is a procedural rule, it can be revised by the Office Of Hearings and Appeals at any time, and public comments may be useful in helping the Office to determine whether further revision of its procedural rules may be appropriate. Comments should be submitted in writing within 30 days of the date of publication of this amendment in the **Federal Register** and addressed to:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M St. NW., Washington, D.C. 20461.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–91; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70; Department of Energy Organization Act, Pub. L. 95–91, as amended, Pub. L. 95–620; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 205 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., April 11, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Section 205.69E is amended to revise subparagraph (a)(1) to read as follows:

§ 205.69E Ex Parte Communications: Prohibition and disclosure requirement.

(a)(1) Following the issuance of a Proposed Decision and Order, no person who is a party or who is otherwise participating in a contested exception proceeding pursuant to a notice filed in accordance with § 205.59 shall engage in an *ex parte* communication with an officer or employee of the Department of Energy concerning the pending Application for Exception. This restriction does not apply to communications authorized by §§ 205.56 through 205.69D or exempted by this section.

* * * * *

[FR Doc. 79-11926 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

Loans to Foreign Governments, Their Agencies, and Instrumentalities; Interpretive Ruling

AGENCY: Comptroller of the Currency.

ACTION: Final Interpretive Ruling.

SUMMARY: This Interpretive Ruling 7.1330 (12 CFR 7.1330) summarizes principles which the Comptroller of the Currency believes applicable to the combining of loans made by national banks to foreign governments, their agencies and instrumentalities under the lending limit provision of 12 U.S.C. 84. A new interpretive ruling is necessary because existing interpretive rulings applying the combining principles of 12 U.S.C. 84 do not directly address such loans.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Glidden, Staff Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1880.

SUPPLEMENTARY INFORMATION: On January 12, 1978, the Comptroller of the Currency published for comment in the **Federal Register** (43 FR 1800-01) a proposed Interpretive Ruling 7.1330 (12 CFR Part 7) stating combining principles and minimum documentation requirements applicable to loans to foreign governments, their agencies and instrumentalities. The primary objective of the proposed addition to 12 CFR Part 7 has been to clarify the circumstances wherein loans to foreign governments and government-related entities would be combined for purposes of the statutory lending limits contained in 12 U.S.C. 84. Section 84 generally prohibits a national bank from making a loan in excess of 10 percent of its unimpaired capital and surplus to a single person or company. For some time, the Comptroller's Office has advised banks making specific inquires of two general principles: (1) Foreign governments and their related entities are regarded as "persons" under the language of 12 U.S.C. 84, and (2) loans to foreign government-related entities that have a significant degree of independence from the central government in their sources and uses of funds will not be combined with loans to the central government so long as such entities satisfactorily evidence means of repayment that are not substantially dependent upon general revenues of the central government. The second principle, involving the sources and uses of funds, has been expressed in staff opinions issued over the past several years in terms of the "means" and "purpose" tests.

We have received approximately 50 written comments in response to the proposed ruling. Those commenting included national banks, trade associations, law firms, and domestic and foreign government agencies.

Discussion of Major Comments

1. *Foreign governments are "persons" within the meaning of 12 U.S.C. 84.* A few respondents argued that the term "persons" in 12 U.S.C. 84 does not include foreign governments.

The courts have traditionally applied the term "person" to foreign and domestic governments when this treatment is justified by the legislative context. The lending limit statute has an expansive remedial purpose and is intended to be all-inclusive except in those instances where Congress has provided a specific exception. To consider foreign governments and their related entities outside the scope of 12 U.S.C. 84 would sanction a large loophole, be inconsistent with Congressional determination of exemptions under both 12 U.S.C. 84 and 12 U.S.C. 24(7), and undermine the protective intent of the statutory scheme. The Comptroller, therefore, concludes that foreign governments must be viewed as subject to the lending limit statute.

2. *The relevance of 12 U.S.C. 84 to foreign government borrowings.* A few of the respondents suggested that the means and purpose tests as applied under 12 U.S.C. 84 do not address the essential risk factors associated with lending to foreign governments and their related entities, namely the borrowing country's ability to acquire foreign exchange to meet its obligations and the stability of the government including its willingness to service outstanding debt. In other words, the lending limit combing rules are irrelevant to the "transfer risk" and "sovereign risk" associated with foreign country borrowings. A related observation was that loans to a foreign government are ordinarily less risky than loans to private businesses within that country.

The Comptroller agrees that the rough diversification rule of 12 U.S.C. 84 was not intended by Congress—and can never serve—as a substitute for a bank's assessment and on-going review of the creditworthiness or access to exchange of individual borrowers. However, to the extent that the lending limit statute operates to spread risk among countries, it does lessen a bank's exposure to transfer risk and sovereign risk that may be associated with any particular nation. Assessment of, and tailored limitation upon, cross-border risk in individual banking organizations remains dependent upon adequate internal controls and the institution-by-institution analysis which is part of the dynamics of the bank examination process.

3. *Definition of government agencies and instrumentalities.* A number of respondents asked for a definition of government agency or instrumentality. This definitional problem really involves two inquiries. First, when must a borrower be considered a government agency or instrumentality as opposed to a private entity? Second, when must a borrower be considered a part of the central government as opposed to an agency or instrumentality whose degree of independence from the central government will be analyzed under the means and purpose tests?

The Comptroller believes that no single definition suffices to cover all circumstances and, consequently, does not include such a definition in the final ruling. At one extreme, if there is no direct or indirect government ownership, the borrower is a private entity not covered by the ruling. At the other extreme, if the borrower is a central bank or a government ministry or department which functions only as

such, it is part of the central government and can never be treated as a distinct borrowing entity.

A determination of whether the borrower is synonymous with the government or is sufficiently separate from the government to be treated as an agency or instrumentality which could be entitled to treatment as a separate borrower is fundamental for purposes of the ruling. The means and purpose tests are applicable only after a threshold conclusion has been reached that the borrower does have some separate and independent existence apart from the central government. In the process of deciding whether the borrower is really part of the government or is an agency or instrumentality whose degree of independence should be assessed under the means and purpose tests, questions such as the following are relevant: Is the borrower directed or managed by public officials? Does it have independent sources of funds? What is the nature of its assets and capitalization? Does the borrower have independent access to credit markets? Does it have significant discretion in carrying out government directives or policies? Does the entity pursue regular commercial, industrial or financial programs or is it limited to achievement of a social or infrastructural function which only a government would undertake? How does it fit into the organizational structure of the government? Was the entity created by a specific act passed for a special public purpose or was it organized under a general law governing a group of similar institutions? Can the entity sue and be sued? Are its liabilities automatically backed by the full faith and credit of the government?

Answers to such questions should enable one to reach a reasonable judgment concerning whether the borrower has any degree of autonomy. Once some autonomy is established, then the means and purpose tests can be applied to determine whether, in each specific case, the borrower's sources and uses of funds are sufficiently independent from the government to justify treatment as a separate borrower under 12 U.S.C. 84.

4. *The question of government control.* The proposed ruling at paragraph (b)(1) required banks to maintain documentation on the legal status of the borrowing foreign entity and on the form of control exercised over that entity by the central government. Respondents have asked for a clarification of the control concept, particularly as it relates to the means test.

The language of the final ruling does not speak of government control but instead focuses on the degree of financial and operational autonomy of the borrowing entity. As noted above, the entity must have some autonomy in order to be considered apart from the central government. If such autonomy exists, then the means and purpose tests are applied to determine whether the borrowing entity has a *sufficient* degree of independence in its sources and uses of funds to justify treatment as a separate borrower under 12 U.S.C. 84 and the interpretive ruling.

5. *Government support and the means test.* Paragraph (b)(4) of the proposed ruling stated that a bank must assess the significance of financial support provided to the borrower by third parties including the central government. The supplemental information portion of the proposal suggested that when government support approached a substantial amount of the borrowing entity's annual revenues, such as 50 percent, a presumption of lack of independent means might arise. Respondents have asked for a clarification of the relationship between the extent of government support to the borrower and satisfaction of the means test.

The language of (b)(4) in the final ruling has been revised to include a statement that a presumption of dependence arises unless the government support is less than the borrower's annual revenues from other sources. The term "support" includes without limitation, direct or indirect assistance required to cover the borrower's operating expenses, service its debts, absorb portfolio or investment losses, or replace equity dilution. However, revenues derived from arms-length sales of goods and services to the government would not ordinarily be considered support. The presumption is not triggered merely because a normally independent or self-supporting borrower has a single "badyear" and therefore is dependent upon a *temporary* government subsidy to continue operations.

6. *Government guarantees.* The supplemental information portion of the proposed ruling stated that where the bank would not consider making a loan to a public sector borrower without a government guarantee, a presumption of lack of independent means might arise. The proposed ruling required a bank to consider the significance of guarantees by third parties, including the government, in any assessment of the borrower's means of repaying the loan.

The Comptroller agrees with those respondents who expressed the belief that government guarantees should not be discouraged and, further, that a guarantee of obligations of a government-related entity has no real significance apart from the means test. In other words, the determination of whether a borrowing entity has sufficient independent means to service its debt obligations must be made regardless of the presence or absence of a government guarantee. Therefore, the final ruling contains a statement in paragraph (b)(4) that the presence or absence of a guarantee raises no presumption concerning the borrower's ability to meet the means test.

7. *Private entities.* The question has arisen whether a private borrower may ever be considered a public agency or instrumentality under the ruling, even though there is no government ownership, if it is heavily dependent upon government subsidy for survival.

Interpretive Ruling 7.1330 does not apply to a borrowing entity where there is no government ownership. But a loan to such a private entity may be combined with loans to the central government when the entity is functioning merely as a conduit for government borrowing and the lending institution is really looking to the government for repayment of the loan. The combination would be done under the statute even though the interpretive ruling does not apply. Such a concern for substance over form is fundamental to application of 12 U.S.C. 84 and is routinely applied to borrowings domestically.

8. *Timing of the application of the means and purpose tests.* Paragraph (a)(2) of the proposed ruling stated that the means and purpose tests would be applied at the time that each loan is made. But the same paragraph indicated that the purpose test could ultimately be satisfied only if the loan proceeds were used by the borrowing entity in the conduct of its business and for the purpose represented in the loan agreement, a condition which is determinable only after a loan is made. Some respondents cited this apparent inconsistency and asked for clarification.

As a practical matter, banks must apply the means and purpose tests at the time a loan is made. Paragraph (a)(2) has therefore been revised so that the purpose test is satisfied when, from the purpose statement, it is clear that the borrower is seeking funds for the conduct of its general business. The documentation requirement in (b)(5) provides that the borrower's written representation concerning the purpose of the loan will suffice unless the bank, when it disburses the funds, has reason

to know that the loan proceeds will be used in a manner inconsistent with such representation.

Even though a loan is judged for lending limit purposes at the time it is made, the bank must monitor subsequent developments. Paragraph (b)(3) of the ruling, for example, requires the bank to receive financial statements for each year a loan is outstanding. Such monitoring will enable bankers and bank examiners to be aware of an inconsistent use of proceeds or a deterioration in the borrower's independent means. The bank can then effectively apply the means and purpose tests in the context of subsequent developments if the same borrower seeks additional credits. Bank examiners, as they review the current status of an outstanding loan, would combine the loan with other government borrowings if the borrower is no longer truly independent of the central government in its sources and uses of funds. Where such combination causes a bank's aggregate loans to be excessive, the loan would be characterized as "non-conforming" but not a violation of law. A loan that satisfied the means and purpose tests when made will never be considered a violation of law because of later events.

The distinction between a "non-conforming" loan and one that violates 12 U.S.C. 84 is not new. For example, a loan to a single borrower might amount to less than 10 percent of the bank's unimpaired capital and surplus when it is made but at a later date exceed that limit because of a decrease in the bank's capital and surplus. Such a loan has traditionally been considered "non-conforming" but not a violation of law because it did not exceed the lending limit when made.

9. *Documentation requirements.* Paragraph (b)(1) of the proposed ruling required the bank to obtain documentation describing the legal status of the borrowing entity and showing its ownership and any form of control that might be exercised by the central government. Respondents raised two points. A few argued that this requirement was unduly burdensome and would, in specific cases, be difficult if not impossible to satisfy. Second, some respondents wondered what relationship, if any, there was between the means and purpose tests and legal status and control arrangements of the borrowing entity.

As indicated above, the focus of the documentation requirement in (b)(1) has been changed from ownership and control considerations to a description of the financial and operational autonomy of the borrowing entity. The Comptroller believes that obtaining such documentation is not unduly burdensome, is essential if a bank is to know its customers, and is necessary for a reasonable determination of whether a particular borrower satisfies the means and purpose tests at the time a loan is made.

10. *Interrelationship of Interpretive Rulings 7.1310 and 7.1320 with 7.1330.* The supplementary information portion of the proposed ruling stated that the ruling would not supplant Interpretive Rulings 7.1310 and 7.1320 applicable to combining of loans to partnerships, corporations and their subsidiaries and certain common enterprises. Thus, 7.1310 would remain applicable to loans to foreign entities organized as corporations whether or not they are related in some way to the central government.

Several respondents suggested an additional clarifying sentence to the effect that for purposes of 12 CFR 7.1310, the central government is not itself considered to be a corporation. The Comptroller agrees that a foreign government will not be treated as a corporate parent subject to the parent-subsidiary combining principles contained in Interpretive Ruling 7.1310. On the other hand, a public corporation which has subsidiaries and is legally and operationally distinct from the central government is a corporate parent subject to Interpretive Ruling 7.1310 as well as Interpretive Ruling 7.1330.

11. *Commitments.* Some respondents asked whether the means and purpose tests should be applied when the bank makes a commitment to lend rather than when it actually disburses the loan proceeds.

Since a commitment to lend is not equivalent to an "obligation" owed to a bank under 12 U.S.C. 84, a violation of the statute would never be triggered until funds are actually disbursed. However, as a matter of prudent banking, the bank should not commit for a sum which, when loaned, would exceed the lending limit. In this sense, the bank should consider the combining rules at the time it enters into a binding commitment.

12. *Higher lending limit for foreign public sector borrowings.* Several respondents urged the Comptroller to adopt a greater than 10 percent lending limit for foreign public sector credits on the theory that this type of lending is substantially less risky than lending to private borrowers. A few pointed to the existence of competitive inequality between national banks and state banks in those states which have a lending limit higher than 10 percent. There was one suggestion that participation in a credit facility by an official international institution of which the United States Government is a member should be treated differently for purposes of 12 U.S.C. 84.

The Comptroller has no authority to increase the 10 percent statutory lending limit on foreign public sector credits. This is true even though the participation by official institutions might, in some cases, make a loan less risky. Of course, within the 10 percent lending limit framework, individual banking organizations might consider participation by an official institution as a factor that could reduce risk associated with concentration in one or a few foreign countries.

DRAFTING INFORMATION: The principal drafter of this ruling was Mr. William B. Glidden, Staff Attorney.

Adoption of Amendment

For the reasons stated above, the Comptroller amends 12 CFR Part 7 by adding a new § 7.1330 that reads as follows:

§ 7.1330 Loans to foreign governments, their agencies, and instrumentalities.

(a) Loans to foreign governments, their agencies, and instrumentalities will be combined under 12 U.S.C. 84 if they fail to meet either of the following tests:

(1) The borrower must have resources or revenue of its own sufficient over time to service its debt obligations ("means" test);

(2) The loan must be obtained for a purpose consistent with the borrower's general business ("purpose" test). This does not preclude converting the loan proceeds into local currency prior to use by the borrowing entity.

These tests will be applied at the time each loan is made.

(b) In order to show that the "means" and "purpose" tests have been satisfied, a bank shall, at a minimum, assemble and retain in its files the following items:

(1) A statement and supporting documentation describing the legal status and the degree of financial and operational autonomy of the borrowing entity.

(2) Financial statements for the borrowing entity for a minimum of three years prior to making the loan or for each year less than three that the borrowing entity has been in existence.

(3) Financial statements for each year the loan is outstanding.

(4) The bank's assessment of the borrower's means of servicing the loan including specific reasons justifying that

assessment. Such assessment shall include an analysis of the financial history of the borrower, the present and projected economic and financial performance of the borrower, and the significance of any financial support provided to the borrower by third parties including the central government. A presumption of dependence arises unless the government support is less than the borrower's annual revenues from other sources. The presence or absence of a government guarantee raises no presumption concerning the ability of the borrower to satisfy the means test.

(5) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan. Such a written representation will ordinarily be regarded as sufficient evidence to meet the "purpose" test requirements. But when the bank, at the time the funds are disbursed, knows or has reason to know of other information suggesting a use of proceeds inconsistent with the written representation, it may not, without further inquiry, accept that representation.

Dated: April 12, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79-11943 Filed 4-16-79; 8:45 am]

BILLING CODE 4810-33-M

CIVIL AERONAUTICS BOARD

14 CFR Part 385

Delegations and Review of Action Under Delegation; Nonhearing Matters; Requiring Carriers To Continue Essential Air Transportation

[Adopted by the Civil Aeronautics Board at its office in Washington, D.C. April 6, 1979]

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB delegates to the Chief of the Essential Air Services Division the authority to renew orders to air carriers to continue essential air transportation for 30-day periods while the Board searches for carriers to provide replacement service.

DATES: Adopted: April 6, 1979. Effective: April 6, 1979.

FOR FURTHER INFORMATION CONTACT: Patrick V. Murphy, Chief, Essential Air Services Division, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: Eligible cities are guaranteed essential air transportation by section 419 of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978, Pub. L. 95-504. Air carriers that plan to reduce their service to an eligible point below the level of essential air transportation must notify the Board and the relevant State agencies and communities. This notification must be given 90 days before the planned reduction if the carrier holds a certificate or is already receiving subsidy for service at that point. Otherwise, 30 days' notice is required.

When the Board receives one of these notices, it must look for a replacement carrier. If the Board has not found a replacement within the 30 or 90 day notice period, as applicable, section 419(a)(6) requires it to order the incumbent to continue service for another 30 days. The Board must renew the order to continue service every 30 days until it eventually does find a replacement. The incumbent is eligible for subsidy during this period of compulsory service.

An initial order to a carrier to continue service will typically announce the Board's plan of action for securing essential air transportation. Renewals of these orders to continue service, however, will usually be routine matters. We are therefore delegating to the Chief of the Essential Air Services Division of the Bureau of Pricing and Domestic Aviation the authority to issue renewal orders. To ensure that staff activity in this area is brought to the Board's attention, the delegation is limited to three successive renewal orders. A fourth renewal order would have to be issued by the Board, after which three more could be issued under delegated authority, and so on. Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters*, as follows:

1. The Table of Contents is amended by adding a new § 385.14 in Subpart B, to read:

Sec.

* * * * *

Subpart B—Delegation of Functions to Staff Members

* * * * *

385.14 Delegation to the Chief, Essential Air Services Division, Bureau of Pricing and Domestic Aviation.

* * * * *

2. A new § 385.14 is added, to read:

§ 385.14 Delegation to the Chief, Essential Air Services Division, Bureau of Pricing and Domestic Aviation.

The Board delegates to the Chief of the Essential Air Services Division, Bureau of Pricing and Domestic Aviation, the authority to renew, up to three times in succession, a Board order under section 419(a)(6) of the Act to an air carrier to continue providing essential air transportation while the Board attempts to find a replacement carrier.

(Section 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324(note))

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[Regulation OR-151; Amdt. No. 84]

[FR Doc. 79-11942 Filed 4-16-79; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Organization; Conduct and Ethics; and Information and Requests; Delegation of Authority to the Directors of the Divisions of Market Regulation and Enforcement and to the Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its regulations to delegate authority to the Directors of the Divisions of Market Regulation and Enforcement and to the Regional Administrators to notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and financial condition of broker-dealers that, in their view, are in or approaching financial difficulty within the meaning of the Securities Investor Protection Act ("SIPA").

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Michael J. Simon, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202)755-8767.

SUPPLEMENTARY INFORMATION: SIPC, a non-profit membership corporation established by Congress in 1970, is responsible for the administration of SIPA which provides certain protections to customers of broker-dealers that fail. The nature of SIPC's responsibilities requires that it have access to

information developed by the Commission concerning the operational and financial condition of broker-dealers which are in or approaching financial difficulty. The need to provide information to SIPC is frequent, generally routine, and largely nondiscretionary in light of the Commission's responsibilities under Section 5 of SIPA. In view of the foregoing, the rules of the Commission relating to general organization are being amended to delegate to the Directors of the Divisions of Market Regulation and Enforcement and to the Regional Administrators authority to notify SIPC, in appropriate cases, of such information. Accordingly, Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. Section 200.30–3 is amended by adding a new paragraph (d) and redesignating present paragraph (d) as paragraph (e).

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(d) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa, *et seq.*

2. Section 200.30–4 is amended by adding paragraph (a)(6) as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(6) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa, *et seq.*

3. Section 200.30–6 is amended by adding a new paragraph (f) and redesignating present paragraph (f) as paragraph (g).

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(f) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa, *et seq.*

(Sec. 25, Pub. L. 94–29, 89 Stat. 146 (15 U.S.C. 78s); Sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w); Sec. 5, Pub. L. 91–598, 84 Stat. 1644 (15 U.S.C. 78eee))

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) and 553(d)(3) of the Administrative Procedure Act, that the foregoing action relates solely to agency organization, procedure or practice and should be effective immediately in order to improve the providing of information to SIPC about brokers or dealers which are in or approaching financial difficulty. Accordingly, the foregoing action becomes effective immediately.

By the Commission.

George A. Fitzsimmons,
Secretary.

April 10, 1979.

[Rel. No. 34–15713]

[FR Doc. 79–11947 Filed 4–16–79; 8:45 am]

BILLING CODE 8010–01–M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Disability Compensation and Survivors Increased Benefits

AGENCY: Veterans Administration.

ACTION: Final Regulations.

SUMMARY: The Veterans Administration is amending its regulations to implement the Veterans' Disability Compensation and Survivors' Benefits Act of 1978, enacted October 18, 1978. This law (1) increases the rates of disability compensation and dependency and indemnity compensation by approximately 7.3 percent; (2) reduces the service-connected degree of disability evaluation needed to be eligible to receive additional compensation for dependents from 50 percent to 30 percent; (3) increases the Medal of Honor pension from $100 to $200 monthly; (4) provides increased compensation for certain veterans who have suffered service-connected loss or loss of use of three extremities; (5) authorizes an increase in the rate of dependency and indemnity compensation payable to a veteran's surviving spouse who is housebound; (6) increases the compensation payable to certain veterans who have suffered service-connected loss or loss of use of an extremity and nonservice-connected loss or loss of use of the paired extremity; (7) increases the clothing allowance from $203 to $218; (8) establishes a new monthly aid and attendance rate of $900 for certain veterans catastrophically disabled from service-connected disability; (9) authorizes payment of dependency and indemnity compensation rates in certain cases when a veteran's death is nonservice connected; (10) increases from $250 to $300 the burial allowance payable when a veteran's death is nonservice-connected and from $800 to $1,100 (or if greater, the amount payable for the funeral and burial expenses of a federal employee who dies as a result of an injury sustained in the performance of duty) the burial allowance payable when a veteran's death is service-connected; (11) increases the automobile allowance from $3,300 to $3,800, and (12) exempts from taxation the amount of military retired pay equivalent to the amount of compensation or pension a former sevicemember is found entitled to receive from date of the compensation or pension entitlement determination to date of waiver of retired pay provided waiver of retired pay is filed within 1 year after notification of Veterans Administration entitlement. In addition to changes implementing the new law, certain terms have been changed to eliminate gender reference in regulations requiring amendment because of the new law (e.g. "widow or widower" to "surviving spouse").

EFFECTIVE DATE: The increase in the Medal of Honor pension is effective January 1, 1979. All other changes are effective October 1, 1978.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle Jr. 202–389–3005.

SUPPLEMENTARY INFORMATION: On pages 55420–55427 of the **Federal Register** of November 28, 1978, there were published proposed regulations to implement the Veterans' Disability Compensation and Survivors' Benefits Act of 1978, Pub. L. 95–479 (92 Stat. 1560)

Interested persons were given 30 days to submit comments, suggestions, or objections to the proposed regulations. One comment was received that made a number of suggestions to improve the regulations. Some of the commentator's suggestions related to matters of style or grammatical construction. We have adopted some of these suggestions in the final regulations. Since no substantive changes are involved, we are making them without comment. The commentator's other suggestions that we have incorporated in the final rule are

discussed below since they make significant improvement in the final regulations.

The commentator feels that the proposed title of § 3.22, "Benefits payable as if cause of death is service connected", is misleading since it implies that the benefits involved are to be paid on the basis of a legal fiction that the veteran's death was service connected. The commentator said that this was not the intent of Congress. He pointed out that the benefit is intended to provide income security at dependency and indemnity compensation (DIC) rates to the surviving spouses and children of certain totally disabled veterans. The commentator believes that a more appropriate title would be "Benefits at DIC rates in certain cases when death is not service connected". We agree. The final rule incorporates this suggested change.

The proposed § 3.22(a)(1) omits any reference to a death caused by a survivor's willful misconduct. The commentator suggests that we include a reference to § 3.11— which embodies the common-law prohibition against an individual profiting from his or her own wrongdoing—and that we amend § 3.11 to make it applicable to benefits paid under § 3.22. The commentator correctly points out that Congress did not intend for a surviving spouse or child who intentionally and wrongfully caused the death of the veteran to receive benefits under § 3.22. The final regulations, therefore, include the suggested cross reference and amendment to § 3.11.

Regarding § 3.22(b), we have indicated in the final regulation, as the commentator suggests, that an award of social security benefits or workers' compensation is subject to recoupment. The commentator also believes that the proposed § 3.22(b) is deficient in that it fails to indicate the means to be adopted to assure that beneficiaries properly report to the Veterans Administration the receipt of a judgment award or settlement amount for damages for the death of the veteran. Voluntary compliance is the only means we have available to enforce this "offset" provision. The application for death benefits is being amended to ask if the claimant expects to receive such a judgment award or settlement amount. In addition, a beneficiary will be notified when an award of benefits is made under § 3.22 of his or her duty to promptly report a judgment award or settlement amount for damages for the death of the veteran. Also, we have stipulated in the final regulation that a person receiving benefits under § 3.22 is under an affirmative duty to promptly report receipt of such income.

Similar amendments have been made in the final version of § 3.384 since a similar "offset" provision is applicable to payment of increased compensation under § 3.384.

The commentator suggests that in §§ 3.350(h) and 3.352(b)(2) we refer to the requirement of eligibility for the new aid and attendance benefit authorized by 38 U.S.C. 314(r)(2) as "need for a higher level of care", and the benefit itself as "higher level aid and attendance allowance". We have adopted this suggestion in the final regulations.

In the Supplemental Information portion of our proposed regulatory development we said that Congress intended that the provision establishing the new higher level aid and attendance allowance be strictly construed, and that the new allowance be granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial. The commentator believes that the proposed § 3.352(b) should contain similar language. We agree and have so amended the final regulation.

The commentator also believes that the words "under the regular supervision of a licensed health-care professional" appearing in § 3.352(b)(2) should be defined. We agree and have done so in the final regulation. Another suggested change to § 3.352(b) which we have adopted is to state that a relative or other member of a veteran's household who provides health-care services is not exempted from the requirement that he or she be a licensed health-care professional or be providing such services under the regular supervision of a licensed health-care professional.

The final regulations are set forth below.

By direction of the Administrator.

Approved: April 11, 1979.

Rufus H. Wilson,
Deputy Administrator.

§ 3.3 [Amended]

1. Section 3.3 is amended by deleting the words "widow, widower" and inserting "surviving spouse" in the first and second sentences of paragraph (d)(3).

2. Section 3.4 is amended as follows:

(a) By deleting the words "widow, widower" and inserting "surviving spouse".

(1) In the first sentence of paragraph (a);

(2) In the introductory portion of paragraph (c) preceding subparagraph (1);

(b) By revising paragraph (b)(2) to reads as follows:

§ 3.4 Compensation.

* * * * *

(b) *Disability compensation.* * * *

(2) An additional amount of compensation may be payable for a spouse, child, and/or dependent parent where a veteran is entitled to compensation based on disability evaluated as 30 per centum or more disabling. (38 U.S.C. 315)

* * * * *

3. In § 3.5, paragraph (a), the introductory portion of paragraph (b) preceding subparagraph (1) and paragraphs (d) and (e) are revised to read as follows:

§ 3.5 Dependency and indemnity compensation.

(a) *"Dependency and indemnity compensation."* This term means a monthly payment made by the Veterans' Administration to a surviving spouse, child, or parent:

(1) Because of a service-connected death occurring after December 31, 1956, or

(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957. (38 U.S.C. 101 (14))

(b) *Entitlement.* Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:

* * * * *

(d) *Group life insurance.* No dependency and indemnity compensation or death compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occuring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended) based on the same death. (Sec. 501(c)(2), Pub. L. 881, 84th Cong. (70 Stat. 857), as amended by Sec. 13(u), Pub. L. 85–857; (72 Stat. 1266); Sec. 5, Pub. L. 91–621 (84 Stat. 1863))

(e) *Surviving spouse's rate.* (1) The monthly rate of dependency and indemnity compensation for a surviving spouse is based on the "pay grade" of the verteran. This rate is subject to increase as provided in paragraph (e) (3) and (4) of this section. (38 U.S.C. 411(a))

(2) The Secretary of the concerned service department will certify the "pay grade" of the veteran and the certification will be binding on the Veterans Administration. (38 U.S.C. 421)

(3) If there is a surviving spouse with one or more children under the age of 18 (including a child not in the surviving spouse's actual or constructive custody and a child who is in active military, air, or naval service), the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(b) for each child.

(4) If the surviving spouse is determined to be in need of regular aid and attendance under the criteria in § 3.352 or is a patient in a nursing home, the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(c). If the surviving spouse does not qualify for the regular aid and attendance allowance but is housebound under the criteria in § 3.351(f), the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(d).

3a. Section 3.11 is added to read as follows:

§ 3.11 Homicide.

Any person who has intentionally and wrongfully caused the death of another person is not entitled to pension, compensation, or dependency and indemnity compensation or increased pension, compensation, or dependency and indemnity compensation by reason of such death. For the purpose of this section the term "dependency and indemnity compensation" includes benefits at dependency and indemnity compensation rates paid under 38 U.S.C. 410(b).

4. Section 3.20 is revised to read as follows:

§ 3.20 Surviving spouse's benefit for month of veteran's death.

Where the veteran died on or after December 1, 1962, the rate of death pension, or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death. (38 U.S.C. 3110)

5. Section 3.22 and cross references are added to read as follows:

§ 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) *Entitlemant criteria.* Benefits authorized by section 410(b) of title 38, United States Code shall be paid to a deceased veteran's surviving spouse (See § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

(1) The veteran's death was not caused by his or her own willful misconduct; and

(2) The veteran was in receipt of (or but for the receipt of military retired pay was entitled to receive) compensation at time of death for service-connected disablement that either:

(i) Was continously rated totally disabling by a schedular or unemployability rating for a period of 10 or more years immediately preceding death; or

(ii) Was continuously rated totally disabling by a schedular or unemployability rating from the date of the veteran's discharge or release from active duty for a period of not less than 5 years immediately preceding death.

(b) *Effect of judgment or settlement.* If a surviving spouse or child eligible for benefits under paragraph (a) of this section receives any money or property pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran, benefits payable under paragraph (a) of this section shall not be paid for any month following the month in which such money or property is received until the amount of benefits that would otherwise have been payable under paragraph (a) of this section equals the total of the amount of money received and the fair market value of the property received.

(c) *Social security and worker's compensation.* Benefits received under social security or worker's compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Beneficiary's duty to report.* Any person entitled to benefits under paragraph (a) of this section shall promptly report to the Veterans Administration the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

(e) *Relationship to survivor benefit plan.* For the purpose of 10 U.S.C. 1448(d) and 1450(c) eligibility for benefits under paragraph (a) of this section shall be deemed eligibility for dependency and indemnity compensation under 38 U.S.C. 411(a). (38 U.S.C. 410(b))

Cross References: Marriage dates. See § 3.54. Homicide. See § 3.11.

6. Section 3.54 is amended as follows:

(a) By deleting the words "widow's or widower's" and inserting "surviving spouse's" in the first sentence of paragraph (d).

(b) By deleting "widow or widower" and inserting "surviving spouse" in paragraph (e).

(c) By revising the introductory portion of paragraph (b) preceding subparagraph (1) and paragraph (c) to read as follows:

§ 3.54 Marriage dates.

* * * * *

(b) *Compensation.* Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Veterans Administration in effect on December 31, 1957, or who was married to the veteran:

* * * * *

(c) *Dependency and indemnity compensation.* (1) Dependency and indemnity compensation payable under 38 U.S.C. 410(a) may be paid to the surviving spouse of a veteran who died on or after January 1, 1957, who was married to the veteran:

(i) Before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated, or

(ii) For 1 year or more, or

(iii) For any period of time if a child was born of the marriage, or was born to them before the marriage. (38 U.S.C. 404)

(2) In order for a surviving spouse to be entitled to benefits under section 410(b) of title 38, United States Code, in the same manner as if death is service connected, the marriage to the veteran shall have been for a period of not less than 2 years immediately preceding the date of the veteran's death. (See § 3.22) The birth of a child does not change this requirement. (38 U.S.C. 410(b))

7. In § 3.55, the introductory portion of paragraph (a) preceding subparagraph (1) and paragraphs (b), (c) and (d) are revised as follows:

§ 3.55 Terminated marital relationships.

(a) Remarriage of a surviving spouse or marriage of a child shall not bar the furnishing of benefits to such surviving

spouse or to or on account of such child, if the marriage

* * * * *

(b) On and after January 1, 1971, remarriage of a surviving spouse shall not bar the furnishing of benefits to such surviving spouse if the marriage

(1) Has been terminated by death, or

(2) Has been dissolved by a court with basic authority to render divorce decrees unless the Veterans Administration determines that the divorce was secured through fraud by the surviving spouse or by collusion.

(c) On and after January 1, 1971, the fact that a surviving spouse has lived with another person and has held herself (himself) out openly to the public as the spouse of such other person shall not bar the furnishing of benefits to her (him) after she (he) terminates the relationship.

(d) On and after January 1, 1971, the fact that benefits to a surviving spouse may previously have been barred because her (his) conduct or a relationship into which she (he) had entered had raised an inference or presumption that she (he) had remarried or had been determined to be open and notorious adulterous cohabitation, or similar conduct, shall not bar the furnishing of benefits to such surviving spouse after she (he) terminates the conduct or relationship.

* * * * *

8. In § 3.350, paragraphs (a) (introductory portion preceding subparagraph (1)), (f)(1) (i) and (iii) and (2) (i) and (iii) and (h) are revised and paragraph (f)(5) is added so that the added and revised material reads as follows:

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 314.

(a) *Ratings under 38 U.S.C. 314(k).* Special monthly compensation under 38 U.S.C. 314(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed $1,005 monthly when authorized in conjunction with any of the provisions of 38 U.S.C. 314 (a) through (j) or (s). When there is entitlement under 38 U.S.C 314 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates: *Provided,* The total does not exceed $1,408 per month. The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 315, or the special allowance for aid and attendance provided by 38 U.S.C. 314(r).

* * * * *

(f) *Intermediate or next higher rate; 38 U.S.C. 314(p)*—(1) *Extremities.* (i) Anatomical loss or loss of use of one extremity with the anatomical loss or loss of use of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m). The monthly rate is $1,056.

* * * * *

(iii) Anatomical loss or loss of use of extremity at a level preventing natural elbow or knee action with prosthesis in place with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate intermediate between 38 U.S.C. 314 (m) and (n). The monthly rate is $1,183.

(2) *Eyes, bilateral, and blindness in connection with deafness.* (i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m). The monthly rate is $1,056.

* * * * *

(iii) Blindness of one eye having only light perception and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration or other obvious deformity or disfigurement of the eye, will entitle to a rate intermediate between 38 U.S.C. 314 (m) and (n). The monthly rate is $1,183.

* * * * *

(5) *Three extremities.* Anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities shall entitle a veteran to the next higher rate without regard to whether that rate is a statutory rate or an intermediate rate. The maximum monthly payment under this provision may not exceed $1,408. (38 U.S.C. 314(p))

* * * * *

(h) *Special aid and attendance benefit in maximum monthly compensation cases; 38 U.S.C. 314(r).* A veteran receiving the maximum rate ($1,408) of special monthly compensation under any provision or combination of provisions in 38 U.S.C. 314 who is in need of regular aid and attendance or a higher level of care is entitled to an additional allowance during periods he or she is not hospitalized at U.S. Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) The regular aid and attendance allowance is $604; the higher level aid and attendance allowance rate is $900 and is in lieu of the regular aid and attendance allowance. Determination of this need is subject to the criteria of § 3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the maximum $1,408 rate, or was based on an independent factual determination.

* * * * *

9. In § 3.351, paragraph (a) and the introductory portion of paragraph (c) preceding subparagraph (1) are revised and paragraph (f) is added so that the revised and added material reads as follows:

§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.

(a) *Aid and attendance; general.* Additional pension for veterans in need of regular aid and attendance is provided for Spanish-American War veterans (38 U.S.C. 512) and for veterans of the Mexican border period, World War I, World War II, the Korean conflict or the Vietnam era (38 U.S.C. 521). Additional pension for surviving spouses in need of regular aid and attendance is provided for surviving spouses of veterans of all periods of war, including those entitled to pension under the law in effect on June 30, 1960, based on service in World War I, World War II, or the Korean conflict (38 U.S.C. 544). Additional compensation is provided for a married veteran receiving compensation of the 30 percent rate or greater whose spouse is in need of regular aid and attendance. (38 U.S.C. 315(l)(I)) Additional dependency and indemnity compensation and death compensation for surviving spouses and for parents in need of regular aid and attendance is provided for surviving spouses and for parents of veterans of

all periods of service. (38 U.S.C. 322(b); 411(c); 415(h))

* * * * *

(c) *Aid and attendance; criteria.* The veteran, spouse, surviving spouse, or parent will be considered in need of regular aid and attendance if he or she:

* * * * *

(f) *Housebound; dependency and indemnity compensation.* The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 411(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 411(d) if the surviving spouse is permanently housebound by reason of disability. The permanently housebound requirement is met when the surviving spouse is substantially confined as a direct result of disabilities to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime. (38 U.S.C. 411(d))

10. Immediately following § 3.351, the cross references are changed to read as follows:

Cross References: Basic pension determinations. See § 3.314.

Criteria for permanent need for aid and attendance and "permanently bedridden." See § 352.

11. Section 3.352 is amended as follows:

(a) By changing the heading of the section.

(b) By changing the heading of paragraph (a).

(c) By adding paragraph (b) and redesignating paragraph (b) as paragraph (c) so that the added and redesignated material reads as follows:

§ 3.352 Criteria for permanent need for aid and attendance and "permanently bedridden."

(a) *Basic criteria for regular aid and attendance and permanently bedridden.*

* * *

(b) *Basic criteria for the higher level aid and attendance allowance.* (1) A veteran is entitled to the higher level aid and attendance allowance authorized by § 3.350(h) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

(i) The veteran is entitled to the compensation authorized under 38 U.S.C. 314(o), or the maximum rate of compensation authorized under 38 U.S.C. 314(p).

(ii) The veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(iii) The veteran needs a "higher level of care" (as defined in paragraph (b)(2) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

(iv) The veteran's need for a higher level of care than is required to establish entitlement to the regular aid and attendance allowance is determined by a Veterans Administration physician or, in areas where no Veterans Administration physician is available, by a physician carrying out such function under contract or fee arrangement based on an examination by such physician.

(2) Need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a State or political subdivision thereof.

(3) The term "under the regular supervision of a licensed health-care professional", as used in paragraph (b)(2) of this section, means that an unlicensed person performing personal health-care services is following a regimen of personal health-care services prescribed by a health-care professional, and that the health-care professional consults with the unlicensed person providing the health-care services at least once each month to monitor the prescribed regimen. The consultation need not be in person; a telephone call will suffice.

(4) A person performing personal health-care services who is a relative or other member of the veteran's household is not exempted from the requirement that he or she be a licensed health-care professional or be providing such care under the regular supervision of a licensed health-care professional.

(5) The provisions of paragraph (b) of this section are to be strictly construed. The higher level aid-and-attendance allowance is to be granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial. (38 U.S.C. 210(c), 314(r)(2).)

(c) *Attendance by relative.* The performance of the necessary aid and attendance service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.

§ 3.382 [Amended]

12. Section 3.382 is amended as follows:

(a) By adding the words "or she" after the word "he" in the third sentence of paragraph (a).

(b) By deleting the words "his service support his allegation," and inserting "his or her service support his or her allegation," in the first sentence of paragraph (b).

§ 3.383 [Amended]

13. Section 3.383 is amended by adding the words "or her" after the word "his" in paragraphs (a), (b) and (c).

14. Section 3.384 is added to read as follows:

§ 3.384 Additional compensation for non-service-connected loss or loss of use of paired extremity.

(a) *General.* Subject to the conditions of this section a veteran who has service-connected loss or loss of use of one extremity and non-service-connected loss or loss of use of the paired extremity is entitled to increased compensation in the amount specified in 38 U.S.C. 314(t).

(b) *Entitlement Criteria.* (1) The service-connected loss or loss of use of an extremity is rated at 40 percent or more disabling; and

(2) The non-service-connected loss or loss or use of the paired extremity would be rated 40 percent or more disabling if service connected; and

(3) The non-service-connected loss or loss of use of the paired extremity is not the result of the veteran's own willful misconduct; and

(4) The veteran is entitled to receive compensation at any rate under 38 U.S.C. 314 (a) through (i) and special monthly compensation under 38 U.S.C. 314(k).

(c) *Effect of judgment or settlement.* If a veteran receives any money or property pursuant to an award in a

judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the non-service-connected loss or loss of use of the paired extremity upon which entitlement under this paragraph is based, the increased compensation payable by reason of this paragraph shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of the increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received.

(d) *Social security and workers' compensation.* Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (c) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(e) *Veterans duty to report.* Any person entitled to increased compensation under this paragraph shall promptly report to the Veterans Administration the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the non-service-connected loss or loss of use of the paired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

15. In § 3.552, the heading is changed and paragraphs (a)(1), (b)(2) and (g) are revised to read as follows:

§ 3.552 Adjustment of allowance for aid and attendance.

(a)(1) When a veteran is hospitalized, additional compensation or increased pension for aid and attendance will be discontinued as provided in paragraph (b) of this section except as to disabilities specified in paragraph (a)(2) of this section.

* * * * *

(b) * * *

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 314(r) (1) or (2) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

* * * * *

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 314 (l), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation of $1,408 because of entitlement to another rate under section 314(l) on account of need for aid and attendance the compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 314(l) and in addition there is need for regular aid and attendance for another disability, the award during hospitalization will be $1,107 since the disability requiring aid and attendance is 100 percent disabling. (38 U.S.C. 314(p))

(2) If entitlement is under section 314(m), $1,258.

(3) If entitlement is under section 314(n), $1,408 would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling the veteran to the maximum rate under 38 U.S.C. 314(p).

* * * * *

§ 3.556 [Amended]

16. Section 3.556(a)(1) is amended by deleting the words "wife (husband)" and inserting the word "spouse" in the second sentence.

17. In § 3.802, paragraph (b) is revised to read as follows:

§ 3.802 Medal of Honor.

* * * * *

(b) An award of special pension of $200 monthly (prior to Jan. 1, 1979, $100 monthly) will be made as of the date of filing of the application with the Secretary concerned. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor may not receive more than one special pension. (38 U.S.C. 562)

§ 3.803 [Amended]

18. Section 3.803 is amended by deleting "6159" in the citation following paragraph (a).

§ 3.805 [Amended]

19. Section 3.805 is amended by deleting the words "widows (widowers)" and inserting the words "surviving spouses" in the heading and in the introductory portion preceding paragraph (a).

20. In § 3.808, the introductory portion preceding paragraph (a) is revised to read as follows:

§ 3.808 Automobiles or other conveyances; certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding $3,800 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

* * * * *

21. In § 3.1600, paragraphs (a), (c) and (g) are revised to read as follows:

§ 3.1600 Payment of burial expenses of deceased veterans

* * * * *

(a) *Wartime veterans.* When a veteran of any war dies, an amount not to exceed $300 ($1,100 if death is service-connected) (where entitlement is based on § 3.8 (c) or (d), at a rate in Philippine pesos equivalent to $150 or $550 if death is service-connected) is payable on the burial and funeral expenses and transportation of the body to the place of burial, if otherwise entitled within the further provisions of §§ 3.1600 through 3.1611. For this purpose the period of any war is as defined in § 3.2, except that World War I extends only from April 6, 1917, through November 11, 1918, or if the veteran served with the United States military forces in Russia, through April 1, 1920. (38 U.S.C. 902; 907; 107(a))

* * * * *

(c) *Death while properly hospitalized.* If a person dies while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed $300 ($1,100 if he or she died of a service-connected disability) for the actual cost of funeral and burial, and an additional amount for transportation of the body to the place of burial. See § 3.1605. (38 U.S.C. 903; 907)

* * * * *

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or non-service-connected disability pension would have been entitled to disability compensation at time of death) there is payable, in addition to the burial allowance (either $300 or $1,100 if cause of death was service connected), an additional amount for payment of the cost of transporting the

body to a national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts payable under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.

22. In § 3.1601, paragraph (a)(1)(i) is revised to read as follows:

§ 3.1601 Claims and evidence.

(a) Claims. * * *

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill is under $300 only amount of unpaid balance will be payable to the funeral director); or

* * * * *

23. In § 3.1604, the introductory portion of paragraph (a) preceding subparagraph (1) and paragraph (b)(2) are revised to read as follows:

§ 3.1604 Payments from non-Veterans Administration sources.

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed $300 ($1,100 if death was service connected), will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

* * * * *

(b) *Payment by Federal agency.* * * *

(2) A provision in any Federal law or regulation permitting the application of funds due or accrued to the credit of the deceased toward the expenses of funeral, transportation and interment (such as Social Security benefits), as distinguished from a provision specifically prescribing a definite allowance for such purpose, will not bar payment of the burial allowance. In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed $300 will be authorized.

* * * * *

§ 3.1605 [Amended]

24. Section 3.1605 is amended by adding the words "or she" after the word "he" in the first sentence of the introductory portion preceding paragraph (a).

[FR Doc. 79-11891; Filed 4-16-79; 8:45 am]

BILLING CODE 8320-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Implementation of New Legislation—Mobile Homes

AGENCY: Veterans Administration.

ACTION: Final Regulations

SUMMARY: The VA (Veterans Administration) is amending its regulations relating to mobile home loans to authorize a loan guaranty of 50 percent of the loan amount not to exceed $17,500, to provide for use of a veteran's remaining loan guaranty entitlement for purchase of a mobile home, to increase the maximum loan term for single-wide mobile home loans, and to eliminate the maximum loan amounts for the purchase of a mobile home or mobile home lot. An amendment also is being made to reflect VA compliance with the Equal Credit Opportunity Act. The amendments to the regulations published herein are primarily for the purpose of implementing those sections of the Veterans' Housing Benefits Act of 1978, as to the guaranteed loan program for mobile homes.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: The Veterans' Housing Benefits Act of 1978 (Pub. L. 95-476, 92 Stat. 1497) revised and restructured section 1819 of title 38, United States Code, relating to the guaranty of mobile home loans. In general terms, the Act restructured the mobile home loan program along lines similar to the program for conventionally built homes.

The Administrator is now authorized to guarantee up to 50 percent of the principal amount of a mobile home loan not to exceed a maximum loan guaranty of $17,500. The various statutory loan maximums for mobile homes and mobile home lots have been repealed. The amendments to §§ 36.4202, 36.4204, 36.4205, 36.4209(e), and 36.4252(a) implement this statutory revision.

The Act also authorizes the Administrator to restore loan guaranty entitlement used for mobile home purposes when: (1) The property which was security for the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard; and (2) the Administrator has been released from liability as to the loan, or if a loss has been suffered the loss has been paid in full. The Administrator also is authorized to restore a veteran's loan guaranty entitlement used for mobile home purposes if an immediate veteran-transferee has agreed to assume the outstanding balance on the mobile home loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of chapter 37, title 38, United States Code. The statutory requirement that a veteran may have loan guaranty entitlement restored a single time for mobile home loan purposes has been repealed. Section 36.4203(a) has been amended to implement this change.

The previous statutory restriction that a veteran must have maximum loan guaranty entitlement available in order to secure a mobile home loan and the previous statutory restriction that a veteran, after securing a mobile home loan, could not use remaining entitlement for any other purpose until the mobile home loan had been paid in full, have both been repealed. The Administrator is thus now authorized to guarantee mobile home loans using a veteran's remaining loan guaranty entitlement except that a veteran who purchases a mobile home unit with a VA guaranteed loan may not use remaining entitlement to secure a loan for a second mobile home unit until the first unit is disposed of by the veteran or destroyed by fire or other natural hazard. Veterans who purchased a mobile home with a loan guaranteed by the VA may now purchase a conventional home with remaining entitlement, and veterans who purchased a conventional home with a loan guaranteed by the VA may now purchase a mobile home with a loan secured by remaining loan guaranty entitlement. In addition, a veteran who purchased a mobile home unit may purchase a mobile home lot for that unit with a loan secured by remaining loan guaranty entitlement.

The amendment to § 36.4203 (b) and (c) will implement this statutory revision.

The Administrator is now also authorized to increase the maximum loan term for the purchase of a single-wide mobile home or for the purchase of a lot on which to place a mobile home already owned by the veteran. The new loan term will be 15 years and 32 days for these types of loans. Previously such loans had a maximum loan term of 12 years and 32 days. The amendment to § 36.4204(a) will implement this change.

Section 36.4210 is amended to reflect Veterans Administration compliance with the Equal Credit Opportunity Act (Pub. L. 93–495, 88 Stat. 1521, Pub. L. 94–239, 90 Stat. 251).

Section 36.4207(d) is amended to reflect that the current mobile home standards are prescribed by the Administrator in lieu of the American National Standards Institute.

In additional, a minor editorial change has been made to § 36.4209 (b)(5) and (g) to revise the statutory citations.

Compliance with the provisions of section 1.12 of this chapter which requires publication of proposed regulations prior to final adoption is waived in this instance. The substantive changes implement statutory mandates. Those changes not required by statute are editorial rather than substantive. Compliance with section 1.12 would serve little purpose and would not be in the public interest.

The amendments are adopted under authority granted to the Administrator by section 1819(g) of title 38, United States Code.

Approved: April 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,
Deputy Administrator.

1. In § 36.4202, paragraph (1) is revoked.

§ 36.4202 Definitions.

* * * * *

(1) [Revoked]

* * * * *

2. Section 36.4203 is revised to read as follows:

§ 36.4203 Eligibility of the veteran for the mobile home loan benefit under 38 U.S.C. 1819.

(a) To be eligible for the mobile home loan benefit a veteran must have loan guaranty entitlement for mobile home purposes available for use. Notwithstanding the provisions of § 36.4205(e), the Administrator may exclude the amount of guaranty entitlement used for any guaranteed mobile home loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2) The loan has been repaid in full, or the Administrator has been released from liability as to the loan, or if the Administrator has suffered a loss on said loan, such loss has been paid in full; or

(3) An immediate veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of chapter 37, title 38, United States Code.

The Administrator may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraph (a)(1) or (2) of this section.

(b) A veteran may use his or her remaining home loan guaranty entitlement for any purpose authorized by 38 U.S.C. 1810, 1811, or 1819 except that a veteran who has purchased a mobile home unit may not purchase a second mobile home unit until the unit which secured the first loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

(c) The available entitlement of a veteran will be determined by the Administrator as of the date of receipt of an application for guaranty of a mobile home loan or loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Veterans Administration. Eligibility derived from the most recent period of service (1) shall cancel any unused entitlement derived from any earlier period of service, and (2) shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan—

(i) On property which the veteran owns at the time of application; or

(ii) As to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Administrator the resulting indebtedness of the veteran to the United States has been paid in full. *Provided,* That if the Administrator issues or has issued a certificate of commitment covering the loan described in the application for guaranty or in the loan report, the amount and percentage of guaranty contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Administrator in the meantime and prior to the issuance of the evidence of guaranty shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Administrator will be deemed to have incurred actual loss on a guaranteed or insured loan if the Administrator has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Administrator is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Administrator will be deemed to have incurred an actual loss if the loan is in default. (38 U.S.C. 1819(b) (1) and (2) and (c)(4))

3. Section 36.4204 is revised to read as follows:

§ 36.4204 Loan purposes, maximum loan amounts and terms.

(a) A mobile home loan may be guaranteed if the loan is for one of the following purposes:

(1) To purchase a lot on which to place a mobile home already owned by the veteran;

(2) To purchase a single-wide mobile home;

(3) To purchase a single-wide mobile home and a lot on which to place such home;

(4) To purchase a double-wide mobile home; or

(5) To purchase a double-wide mobile home and lot on which to place such home;

(b) A loan for any of the purposes described in paragraph (a) of this section may include an amount determined by the Administrator to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the costs of installing utility connections and sanitary facilities, of paving, and of constructing a suitable pad for the mobile home.

(c) The maximum permissible loan terms shall not exceed:

(1) 15 years and 32 days in the case of a loan to purchase a single-wide mobile home or a single-wide mobile home and lot;

(2) 15 years and 32 days in the case of a loan to purchase a lot on which to

place a mobile home already owned by the veteran;

(3) 20 years and 32 days in the case of a loan to purchase a double-wide mobile home or a double-wide mobile home and lot; or

(4) In the case of a used mobile home the maximum term set forth in paragraph (c)(1) or (3) of this section or the remaining physical life expectancy of the unit as established by the Administrator, whichever is less. (38 U.S.C. 1819(a) (1) and (2), (d)(1), (e)(4)(B))

(d) The loan amount in an individual case shall not exceed the following:

(1) In the case of a loan to purchase a new mobile home unit only, the loan amount shall not exceed the sum of the following:

(i) 120 percent of the figure produced by the following computation:

Subtract from the manufacturer's invoice cost the manufacturer's invoice cost of any components (furnishings, accessories, equipment) removed from the unit by the dealer. To the remainder add the dealer's cost for any components added by such dealer. The sum so obtained shall be the figure to be multiplied by the specified percentage.

(ii) 100 percent of the actual amount of fees and charges permitted in § 36.4232.

(2) In the case of a loan to purchase a new mobile home unit plus the cost of necessary site preparation where the veteran owns the lot, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus such costs of necessary site preparation as are approved by the Administrator.

(3) In the case of a loan to purchase a new mobile home unit plus the purchase of an undeveloped lot on which to place such home plus the cost of necessary site preparation, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the undeveloped lot as determined by the Administrator plus such costs of necessary site preparation as are approved by the Administrator.

(4) In the case of a loan to purchase a new mobile home unit plus the cost of a suitably developed lot on which to place such home, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the developed lot as determined by the Administrator.

(5) In the case of a loan to purchase a lot upon which will be placed a mobile home owned by the veteran the loan is limited to the reasonable value of a developed lot or the reasonable value plus such amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation for an undeveloped lot.

(6) In the case of a used mobile home the maximum loan may not exceed the reasonable value as established by the Administrator, plus:

(i) Actual fees or charges for required recordation of documents;

(ii) The amount of any documentary stamp taxes levied on the transaction;

(iii) The amount of State and local taxes levied on the transaction; and

(iv) The premium for customary physical damage insurance and vendor's single interest coverage on the mobile home for an initial policy term of not to exceed 5 years.

(e) The cost of the transaction which will not be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources. Closing costs and prepaid items incident to the real estate portion of any mobile home loan must be paid in cash and may not be included in the loan amount.

4. Section 36.4205 is revised to read as follows:

§ 36.4205 Computation of guaranty.

(a) The amount of guaranty in respect to a loan guaranteed under 38 U.S.C. 1819 shall be fifty (50) percent of the original principal amount of the loan or $17,500, whichever is less.

(b) Subject to the provisions of paragaraph (c) of § 36.4203, the following formulas will determine the amount of guaranty entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $25,000. The sum remaining is the amount of available entitlement for use not to exceed $17,500 for mobile home purposes.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $25,000. The sum remaining is the amount of available entitlement for use not to exceed $17,500 for mobile home purposes.

(3) If a veteran previously secured a mobile home loan, the amount of entitlement used for mobile home purposes is subtracted from $25,000. The sum remaining is the amount of available entitlement for use for home loan purposes only. To determine the amount of additional entitlement available for mobile home purposes, the amount of entitlement previously used for mobile home purposes is subtracted from $17,500. The sum remaining is the amount of available entitlement for use for mobile home purposes.

(c) For the purpose of computing the remaining guaranty benefit to which a veteran is entitled, mobile home and mobile home lot loans guaranteed prior to October 1, 1978, shall be taken into consideration as if made subsequent thereto, and the veteran's entitlement will be reduced by the amount of the Administrator's guaranty issued in the particular loan transaction.

(d) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty.

(e) The amount of any guaranty for a mobile home or mobile home lot loan shall be charged against the original or remainder of the borrower's guaranty benefit available for mobile home purposes. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum guaranty legally available to a veteran for mobile home purposes shall have been granted, no further guaranty for mobile home purposes shall be available to the veteran.

(f) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Administrator, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity. (38 U.S.C. 1801(a)(2), 1819(c)(4))

(g) Any evidence of guaranty issued by the Administrator in respect to such loan shall be conclusive evidence of the eligibility of the loan for guaranty and of the amount of such guaranty *Provided, however,* That the Administrator may establish against the original lender, defenses based on fraud or material misrepresentation and that the Administrator may by regulations in force at the date of such issuance establish partial defenses to the amount payable on the guaranty.

5. In § 36.4207, paragraph (d) is revised to read as follows:

§ 36.4207 Mobile home standards.

To qualify for purchase with a guaranteed loan a mobile home must

* * * * *

(d) Comply with the specifications in effect at the time the loan is made that are prescribed by the Administrator. (38 U.S.C. 1819(h)(1))

6. In § 36.4209, paragraph (b)(5), (e) and (g) are revised to read as follows:

§ 36.4209 Reporting requirements.

* * * * *

(b) * * *

(5) That the loan conforms otherwise to the applicable provisions of 38 U.S.C. chapter 37 and § 36.4200 series.

* * * * *

(e) Subject to compliance with the regulations concerning guaranty of mobile home loans to veterans, the Certificate of Guaranty will be issuable within the available entitlement of the veteran on the basis of the loan reported. No certificate of commitment shall be issued, and no loan shall be guaranteed, unless the lender, the veteran, and the loan are shown to be eligible; nor shall guaranty be issued on any mobile home loan unless the Administrator determines that there has been compliance by the veteran with the certification requirements of 38 U.S.C. 1804(c). (38 U.S.C. 1819(c)(2), (e)(5))

* * * * *

(g) Approval by the Administrator pursuant to 38 U.S.C. 1819(c)(1) is required before a lender may close mobile home loans or mobile home lot loans on the automatic basis. Evidence of guaranty will be issuable if the loan closed on the automatic basis is reported to the Administrator within 30 days of full disbursement, and upon certification of the lender that no default exists thereunder which has continued for more than 30 days and that the loan complies with paragraphs (b)(2), (3), (4), and (5), (e), and (f) of this section. Upon the failure of the lender to report in accordance with this paragraph the loan will not be eligible for guaranty unless the lender submits with the report a certification that the loan is not in default and an explanation as to why the loan was not timely reported. (38 U.S.C. 1819 (c)(1) and (g))

7. Section 36.4210 is revised to read as follows:

§ 36.4210 Joint loans.

(a) Except as provided in paragraph (b) of this section, the prior approval of the Administrator is required in respect to any mobile home loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only. The amount of the guaranty shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. chapter 37 and the regulations concerning guaranty of mobile home loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of property shall not require prior approval or preclude the issuance of a guaranty based upon the entire amount of the loan. If both spouses be eligible veterans, either or both, within permissible maxima, may utilize available guaranty entitlement.

(c) For the purpose of determining the rights and the liabilities of the Administrator with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran. (38 U.S.C. 1803(c)(1))

8. In § 36.4252, subparagraphs (5) and (6) of paragraph (a) are revoked and the former subparagraph (7) is redesignated paragraph (5) as follows:

§ 36.4252 Loans for purchase of mobile home and for the acquisition of a lot.

(a) A loan to purchase a mobile home may include funds (or be augmented by a separate loan) to finance all or part of the cost of acquisition by the veteran of a lot on which to place such mobile home and any such loan shall be eligible for guaranty, provided that

* * * * *

(5) The loan conforms otherwise to the requirements of the § 36.4200 series.

* * * * *

[FR Doc. 79-11892 Filed 4-16-79; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 1

Validation of Performance in Automated Data Processing (ADP) Systems and Services Procurements

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes interim policies restricting the use of benchmarks in low value procurements and of remote terminal emulation, a benchmarking technique. This technique is used to evaluate the anticipated performance of ADP systems and services for which it would be impractical to conduct live test demonstrations of a total proposed data communications network. The increased use of emulation by both Government and industry and the growing complexity of data networks were responsible for the initiation of a joint Government-industry study of the use of remote terminal emulation in the procurement of ADP systems and services. The General Services Administration is endeavoring to reconcile industry emulation capabilities and Government projections of future emulation benchmark test requirements. The intended effect of this regulation is to provide for the use of benchmarking techniques for performance validations that recognize the current state of technology and are practicable, fair, and equitable.

DATES: Effective date: This regulation is effective May 10, 1979, but may be observed earlier.

Expiratrion date: This regulation will continue in effect until canceled.

Comments due on or before: July 10, 1979.

ADDRESS: Comments should be addressed to: Acting Director, Federal Procurement Regulations Directorate (APR), General Services Administration, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Acting Director, Federal Procurement Regulations Directorate, 703–557–8947.

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

In 41 CFR Chapter 1, the following temporary regulation is added to the appendix at the end of the chapter to read as follows:

Federal Procurement Regulations Temporary Regulation 49

TO: Heads of Federal agencies.

SUBJECT: Use of benchmarks and remote terminal emulation for performance validation in the procurement of automated data processing (ADP) systems and services.

1. *Purpose.* This regulation provides policies for the use of benchmarks and remote terminal emulation during the validation of ADP procurements.

2. *Effective date.* This regulation is effective May 10, 1979, but may be observed earlier.

3. *Expiration date.* This regulation will continue in effect until canceled.

4. *Background.* An important part of the competitive ADP procurement process is validating offeror's representations of the capability and capacity of ADP systems and services. The validation techniques frequently used involve benchmarks and live test demonstrations. Either technique can be too costly or inadequate for the validation of a total network of computers, terminal devices, and data communication facilities.

a. *Benchmarks.* Benchmarks often are very expensive. In relatively low dollar value competitive procurements a requirement for benchmarks tend to discourage competition and may result in higher cost to the Government. This is particularly true where the offeror must convert user programs in order to run a prescribed benchmark.

b. *Remote terminal emulation.* Requirements for large computer and data communication networks have made it necessary to evaluate ADP/teleprocessing systems and services when it is impractical to conduct a live test demonstration (LTD) with the total proposed network. Currently, there is no one alternative to a LTD of the total system or service which would be practical, accurate, and fair in all procurements. Therefore, remote terminal emulation (devices and computer programs that imitate the ADP system being procured such that the same data is accepted, the same programs are executed and the same results as are expected from the imitated system are achieved) or alternative methods of determining acceptable teleprocessing performance must be used. Remote terminal emulation implementations are available for measuring the teleprocessing performance of multiterminal and online computer systems and services during validation. However, not all offerors of computer systems or services currently have this emulation capability. Although there is some commonality in the design of remote terminal emulators (RTE's), this commonality is not sufficient to ensure that all RTE's are functionally equivalent. Accordingly, fair and equitable evaluations using remote terminal emulation can be questionable in the absence of extensive verification, validation, and control procedures. In view of this situation, a joint Government-industry study effort has been initiated.

5. *Definitions.* The terms used in this regulation have meanings as follows:

a. "System under test" (SUT) means an ADP system or component thereof whose performance is being validated during the procurement process.

b. "Internal emulation" means a technique used for teleprocessing performance validation in which the teleprocessing workload is introduced from software running internal to the SUT, either in the central processing unit, the communications front end, or, when the architecture supports it, some other processor configured as part of the SUT.

c. "Remote terminal emulation" means a technique for teleprocessing performance validation in which the driver and monitor components are implemented external to and independent of the SUT.

d. "Driver" means a remote terminal emulation component, external to the SUT, which introduces specified workload demands to the ADP system being tested.

e. "Monitor" means a remote terminal emulation component, external to the SUT, which records data descriptive of the remote terminal emulator/SUT interaction.

f. "Remote terminal emulator" (RTE) means a specific hardware and software implementation of a teleprocessing workload driver (a monitor may or may not be an integral part of an RTE).

6. *Policy on the use of benchmarks for low dollar value ADP systems procurements and of remote terminal emulation in the procurement of ADP systems and services.*

a. *Use of benchmarks in the procurement of low dollar value ADP systems.*

(1) Solicitations involving low dollar vaule procurements shall not require benchmarks where performance can be validated by some other means. When the use of benchmarks is necessary, solicitations shall not require the running of "worst case" benchmark programs which are not representative of the using agency's data processing needs.

(2) Mandatory benchmarks shall not be used in solicitations for ADP systems of $300,000 (purchase value) or less unless the using agency determines that there is no other acceptable means of validation.

(3) For ADP systems of $300,000 or less, the following validating methods shall be considered:

(i) Validation of performance by the technical evaluation of proposed ADPE and software; or

(ii) Evaluation of an operational ADP installation processing a similar workload on comparable equipment.

b. *Use of remote terminal emulation for ADP systems procurements.*

(1) Solicitations shall not require the mandatory use of remote terminal emulation for performance validation of ADP systems unless the using agency determines that the use of remote terminal emulation is the only practicable means of measuring teleprocessing performance.

(2) The use of RTE supplied by an offeror for installation acceptance testing shall not be made mandatory under any circumstances.

c. *Use of remote terminal emulation for ADP services procurements.*

(1) Solicitations shall not require the mandatory use of remote terminal emulation in ADP services procurements except for:

(i) Dedicated teleprocessing requirements, and

(ii) Unusually large and complex shared teleprocessing requirements.

(2) Agencies desiring to make use of remote terminal emulation mandatory in the procurement of ADP services for requirements other than those listed in paragraph 6c(1) shall identify and justify to GSA the need for the use of the contemplated remote terminal emulation. This information will be provided to GSA along with the submission of GSA Form 2068, Request for ADP Services.

7. *Agency implementation of remote terminal emulation policy.*

a. Remote terminal emulation and alternative methods for validating acceptable teleprocessing performance shall be considered and evaluated before specifying the use of any approach or combination of approaches in the procurement of a specific ADP system or service. Examples of alternatives which may be acceptable are:

(1) Evaluation of an operational ADP installation that has a comparable ADPE

configuration installed and is processing a similar workload;

(2) Use of internal emulation; and

(3) Benchmarking of a logical subset of the teleprocessing capability and using the results to project total system teleprocessing performance through extrapolation.

b. If it is determined that there is no acceptable alternative to a remote terminal emulation for measuring teleprocessing performance in the procurement of ADP systems or services, a RTE implementation may be specified as mandatory in the solicitation document. However, potential offerors must be given detailed instructions at least 30 days prior to release of the solicitation which specify the exact manner in which the RTE is to be implemented. A notice indicating the availability of these materials shall be published in the Commerce Business Daily (CBD).

c. At the same time that the availability notice is published in the CBD, using agencies shall furnish the General Services Administration (CDS), Washington, DC 20405 with the following:

(1) The detailed justification which is the basis for the use of the RTE, and

(2) the relevant solicitation provisions and related material. The related material shall, as a minimum, include the LTD specification, description of the benchmark test programs and associated data, description of how the tests are to be administered and observed, how data resulting from execution of the tests are to be gathered and analyzed, the criteria to be employed in evaluating these data, and how evaluation of these data is expected to contribute to the evaluation of the proposal.

8. *GSA assistance.* Preliminary results of the joint Government-industry study on RTE's may be helpful to agencies in evaluating validation alternatives set forth in paragraph 7. Agencies can obtain these results by contacting the General Services Administration (CDD), Washington, DC 20405 (202–566–1076; FTS 566–1076).

9. *Effect on other directives.* This regulation supplements the requirements prescribed in Subpart 1–4.11 of the Federal Procurement Regulations, Subparts 101–36.2 and 101–36.4 of the Federal Property Management Regulations, and Federal Information Processing Standards Publication 42–1.

10. *Solicitation of comments.* The views of agencies and other interested parties are invited regarding the effect or impact of this regulation and the policy and procedures that should be adopted in the future. Comments should be submitted within 90 days after this regulation is published in the **Federal Register.** The comments will be considered in the development of the final regulation.

Dated: April 4, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FPR Temp. Reg. 49]

[FR Doc. 79–11973 Filed 4–16–79; 8:45 am]

BILLING CODE 6820–82–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

45 CFR Part 20

Vending Stands for the Blind on Federal Property in the Custody of the Department of Health, Education, and Welfare; Deletion of Part

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Deletion of Part 20 in Title 45 of the Code of Federal Regulations (CFR).

SUMMARY: The Rehabilitation Services Administration (RSA) amending the CFR by deleting Part 20 in Title 45. This amendment is necessary because Part 20 was superseded on March 23, 1977 by Part 1369 in Chapter XIII of Title 45. The effect of this amendment is to delete the obsolete Part 20 regulation and to inform the public that 45 CFR Part 1369—Vending Facility Program for the Blind on Federal and other Property, is the current regulation for this program.

EFFECTIVE DATE: March 23, 1977.

FOR FURTHER INFORMATION CONTACT: Kathleen Arneson, Director, Division of Legislation, Regulations, and Congressional Relations, Rehabilitation Services Administration, 330 C Street, S.W., Room 3014, Washington, D.C. 20201, (202) 245–0771.

SUPPLEMENTARY INFORMATION: Part 20 regulated the operation of vending facilities for the blind on Federal property based on section 4(a) of Public Law 83–565. When Public Law 93–516 was passed, new regulations based on this law were published in 45 CFR Part 1369, because the Rehabilitation Services Administration had been transferred to the Office of Human Development. Therefore, Part 20 which is obsolete, is removed from Title 45 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program No. 13.624)

Dated: March 15, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: April 11, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79–11949 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–92–M

45 CFR Part 280

Grants for Expansion and Development of Undergraduate and Graduate Programs in Social Work; Deletion of Part

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Deletion of Part 280 in Title 45 of the Code of Federal Regulations (CFR).

SUMMARY: The Administration for Public Services (APS) in the Office of Human Development Services is amending the CFR by deleting Part 280 in Title 45. This amendment is necessary because the legislative authority for Part 280 expired on June 30, 1972. The effect of this amendment is to delete the obsolete Part 280 regulation.

EFFECTIVE DATE: April 17, 1979.

FOR FURTHER INFORMATION CONTACT: Johnnie U. Brooks, Director, Office of Policy Control, Administration for Public Services, 330 C Street, S.W., Room 2225, Washington, D.C. 20201, (202) 245–9415.

SUPPLEMENTARY INFORMATION: Part 280 regulated grants for expansion and development of undergraduate and graduate programs in social work. These grants were authorized for the period July 1, 1969 through June 30, 1972 by Section 707 of the Social Security Act (81 Stat. 930). Part 280 was published as a final regulation in the **Federal Register** on January 28, 1969 (34 FR 1324). When the authorizing legislation expired on June 30, 1972, Part 280 was no longer needed. Therefore, Part 280, which is obsolete, is removed from Title 45 of the Code of Federal Regulations.

Dated: March 9, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: April 11, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79–11950 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–92–M

45 CFR Part 415

Grants for Construction of University Affiliated Facilities for the Mentally Retarded; Deletion of Part

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Deletion of Part 415 in Title 45 of the Code of Federal Regulations (CFR).

SUMMARY: The Rehabilitation Services Administration (RSA) in the Office of Human Development Services is amending the CFR by deleting Part 415 of Title 45. This amendment is necessary because Part 415 was superseded on January 27, 1977 by Parts 1385 and 1387 of Chapter XIII of Title 45. The effect of this amendment is to delete the obsolete Part 415 regulation and to inform the public that 45 CFR Parts 1385 and 1387 are the current regulations for this program.

EFFECTIVE DATE: January 27, 1977.

FOR FURTHER INFORMATION CONTACT: Kathleen Arneson, Director, Division of Legislation, Regulations, and Congressional Relations, Rehabilitation Services Administration, 330 C Street, S.W., Room 3014, Washington, D.C. 20201, (202) 245–0771.

SUPPLEMENTARY INFORMATION: Part 415 regulated grants for the Construction of University Affiliated Facilities for the Mentally Retarded based on Pub. L. 88–164 (the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963). When Pub. L. 91–517 (The Developmental Disabilities Services and Facilities Construction Act) was passed and amended by Pub. L. 94–103 (The Developmentally Disabled Assistance and Bill of Rights Act) new regulations based on these laws were published in 45 CFR Parts 1385 and 1387 because the Rehabilitation Services Administation had been transferred to the Office of Human Development. Therefore, Part 415 which is obsolete, is removed from Title 45 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program No. 13632)

Dated: March 15, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: April 11, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79–11948 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–92–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1100

Statement for the Guidance of the Public—Organization, Procedure and Availability of Information

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: This revision updates the existing regulations to reflect changes in organization and location of the National Endowment for the Arts and the National Endowment for the Humanities.

EFFECTIVE DATE: May 25, 1979.

ADDRESS: National Foundation on the Arts and the Humanities, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street, NW., Washington, D.C. 20506, telephone: 202/634–6588.

Part 1100 is revised in its entirety as follows:

PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

Sec.

1100.1 Organization.
1100.2 Procedures and transaction of business.
1100.3 Availability of information to the public.
1100.3–1 Statements of policy.
1100.3–2 Current index.
1100.3–3 Requests for records.
1100.3–4 Procedures on requests for documents.
1100.3–5 Foundation report of actions.
1100.4 Schedule of fees for search and duplication of records.
1100.4–1 General schedule.
1100.4–2 Schedule.

Authority: 5 U.S.C., as amended by Pub. L. 93–502.1100 issued under 5 U.S.C. 552.

§ 1100.1 Organization.

(a) The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965 (79 Stat. 845; 20 U.S.C. 951). The Foundation is composed of a National Endowment for the Arts, a National Endowment for the Humanities, and a Federal Council on the Arts and the Humanities. Each Endowment is headed by a Chairman and has a National Council composed of 26 Presidential appointees, with the Chairman of the Endowment also serving as Chairman of the Council. The purpose of the Foundation is to develop and promote a broadly conceived national policy of support for the humanities and the arts in the United States.

(b) The Endowments accomplish their missions primarily by providing financial assistance for projects in the arts and the humanities, including the making of fellowship and other awards to individuals as well as awards to nonprofit organizations. By statute, awards made to organizations by the National Endowment for the Arts may not exceed one-half the cost of the project, except that a percentage of the Arts Endowment's funds may be used for nonmatching grants to organizations which show that they have attempted unsuccessfully to secure funds equal to the amounts applied for.

(c) The organizational arrangement of the Foundation is as follows:

(1) *National Endowment for the Arts*—(i) *Office of the Chairman.* The Endowment is headed by the Chairman, who is also Chairman of the National Council on the Arts and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Arts and the Federal Council on the Arts and the Humanities, is responsible for establishing Endownment policies and for developing and carrying out programs to provide support for projects and productions in the arts. The Chairman is assisted by two Deputy Chairmen, who are appointed by him. They are the Deputy Chairman for Policy and Planning and the Deputy Chairman for Programs.

(ii) *Program Activities of the Arts Endowment.* The activities of the Endowment are carried out with the aid of the following program offices:

(A) Architecture, Planning and Design
(B) Dance
(C) Education
(D) Expansion Arts
(E) Federal State Partnership
(F) Folk Arts
(G) Literature
(H) Media Arts
(I) Museums
(J) Music
(K) Special Projects
(L) Theatre
(M) Visual Arts

Each of the above offices assists the Chairman in developing programs to provide support for activities in its area of interest.

(2) *National Endowment for the Humanities*—(i) *Office of the Chairman.* The Endowment is headed by the

Chairman, who is also Chairman of the National Council on the Humanities and a member of the Federal Council on the Arts and the Humanities. The Chairman, with the advice of the National Council on the Humanities and the Federal Council on the Arts and the Humanities, is responsible for establishing Endowment policies and for developing and carrying out programs to provide support for research in the humanities, for strengthening the research potential of the United States in the humanities, or providing fellowships for training in the humanities, for fostering the interchange of information in the humanities and for fostering public understanding and appreciation of the humanities. The Chairman is assisted by a Deputy Chairman, who is appointed by him.

(ii) Program Activities of the Humanities Endowment.

(A) The program activities of the Endowment are carried out through three divisions:

(*1*) The Division of Research and Publication.

(*2*) The Division of Fellowships and Stipends.

(*3*) The Division of Education and Special Projects.

(B) The Division of Research and Publication supports research and programs to strengthen the research potential of the United States, as well as to encourage the preparation of scholarly works in the humanities.

(C) The Division of Fellowships and Stipends supports individual scholarship and training by providing individuals with time uninterrupted by other responsibilities.

(D) The Division of Education and Special Projects provides support primarily to institutions-schools, colleges, universities, museums, public agencies, and private nonprofit groups to increase public understanding and appreciation of the humanities.

§ 1100.2 Procedures and transaction of business.

(a) *Inquiries and transaction of business.* All inquiries, submittals or requests should be addressed as follows: (1) Those involving the work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, Washington, D.C. 20506, or a member of the public may call at the Endowment's offices at 2401 E Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday; (2) requests involving the National Endowment for the Humanities should be addressed to the National Endowment for the Humanities, Washington, D.C. 20506, or a member of the public may call at the Endowment's offices at 806 15th Street, N.W., Washington, D.C. during normal business hours which are 9 a.m. to 5:30 p.m., Monday through Friday. If a person is uncertain as to which organization an inquiry should be addressed, he should address his inquiry to the National Foundation on the Arts and the Humanities, Washington, D.C. 20506.

(b) *General method of functioning, procedures, forms, descriptions of programs.* In general, the Endowments provide financial support for activities in the arts and humanities on the basis of applications submitted by the person or organization desiring support. In general, such awards are made on a merit basis after at review process involving staff members and outside experts. The endowments publish various announcements and booklets describing their programs and explaining their procedures. "Guide to Programs-National Endowment for the Arts, 1977/1978" provides a comprehensive description of the programs, functions and procedures of the National Endowment for the Arts. Forms or instructions for application to participate in the programs of the Endowment are obtainable on request. All program announcements, publications or application forms may be obtained by applying either to the National Endowment for the Arts or the National Endowment for the Humanities or by calling in person at their Washington offices.

§ 1100.3 Availability of information to the public.

§ 1100.3–1 Statement of policy.

(a) The Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities are responsible for effective administration of the provisions of Pub. L. 89–487, as amended. The Chairman of each Endowment shall carry out this responsibility through the program and the officials as hereinafter provided in this Part.

(b) In addition, the Chairman of each Endowment, pursuant to his responsibility hereby directs that every effort be expended to facilitate the maximum expedited service to the public with respect to the obtaining of information and records. Accordingly, members of the public may make requests for information and records in accordance with the provisions of § 1100.3–3 of this Part.

§ 1100.3–2 Current index.

(a) Each Endowment shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 1100.3–3 of this Part.

(b) The index for each Endowment shall be available at the Office of the General Counsel, National Endowment for the Arts and the Office of the General Counsel, National Endowment for the Humanities respectively.

§ 1100.3–3 Requests for records.

(a) Requests for access to records of the National Endowment for the Arts and the National Endowment for the Humanities may be filed by mail or in person with the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment between 9 a.m. and 5:30 p.m., Monday through Friday, except holidays.

(b) All requests should reasonably describe the record or records sought: and

(c) Any request submitted in writing should be clearly identified as a request made pursuant to the Freedom of Information Act by labelling the envelope with the letters FOIA.

§ 1100.3–4 Procedures on requests for documents.

(a) *Determination of compliance with requests for document.* (1) Upon request by any member of the public for documents made in accordance with the rules of this part the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request or his delegate in his absence, shall determine whether or not such request shall be granted.

(2) Except as provided in paragraph (c) of this section, such determination shall be made by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request within ten (10) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such request.

(3) The Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment shall immediately notify the party making such request of the determination made, the reasons therefore, and, in the case of a denial of such request, shall notify the party of his right to appeal that determination to the Chairman of the involved Endowment.

(b) *Appeals from adverse determination (denial of request).* (1) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment may appeal such determination. Any such appeal shall be addressed to the Chairman, National Endowment for the Arts, Washington, D.C. 20506 or the Chairman, National Endowment for the Humanities, Washington, D.C. 20506, and shall be submitted within a reasonable time following receipt by the party of notification of the initial denial by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment in the case of a total denial of the request or within a reasonable time following receipt of any of the records requested in the case of a partial denial. In no case shall an appeal be filed later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(2) Upon appeal from any denial or partial denial of a request for documents by the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment, the Chairman of the involved Endowment or the Chairman's specific delegate in his absence, shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt by the Endowment of such appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4)(B), as amended, regarding judicial review of such determination upholding the deial. Notification shall also include the statement that the determination is that of the Chairman, National Endowment for the Arts, or the Chairman, National Endowment for the Humanities, and the name of the Chairman.

(c) *Exception to time limitation.* In unusual circumstances as specified in this paragraph, the time limits prescribed with respect to initial actions or actions on appeal may be extended by written notice from the Deputy Chairman for Policy and Planning of the Arts Endowment or the Deputy Chairman of the Humanities Endowment receiving the request to the person making the request. Such notice shall set forth the reason for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) *Effect of failure by either Endowment to meet the time limitation.* Failure by either Endowment to deny or grant any request for documents within the time limits prescribed by the FOIA (5 U.S.C. 552, as amended) and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making the request.

§ 1100.3–5 Foundation report of actions.

On or before March 1 of each calendar year, the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination.

(b) The number of appeals made by persons under such provisions, the result of such appeals, and the reason for the action upon each appeal that results in the denial of information.

(c) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

§ 1100.4 Schedule of fees for search and duplication of records.

§ 1100.4–1 General Schedule.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants.

§ 1100.4–2 Schedule.

Fees which may be charged by the Foundation for search and duplication of records are as follows:

(a) *Duplication fees.* $2 for the first six (6) pages, five (5¢) cents per page thereafter for photocopying.

(b) *Search fees.* $8 per hour to search records for specific documents plus transportation costs of personnel arising from searches for requested information.

Livingston L. Biddle, Jr.,
Chairman, National Endowment for the Arts.

Joseph Duffey,
Chairman, National Endowment for the Humanities.

[FR Doc. 79–11928 Filed 4–16–79; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1151

Nondiscrimination on the Basis of Handicap; Final Rule

AGENCY: National Endowment for the Arts.

ACTION: Final Rule.

SUMMARY: These regulations implement section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 794. Section 504 provides that "no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The regulations define and forbid acts of discrimination against qualified handicapped persons in programs and activities receiving federal financial assistance from the National Endowment for the Arts. As employers, recipients are prohibited from engaging in discriminatory employment practices on the basis of handicap and must make reasonable accommodation to the handicaps of employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, to ensure that new facilities are constructed in a manner readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

EFFECTIVE DATE: May 25, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street, N.W., Washington, D.C. 20506, 202–634–6588.

SUPPLEMENTARY INFORMATION: On April 13, 1978, the National Endowment for the Arts published proposed regulations regarding Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance from the National Endowment for the Arts, 43 FR 15458, (1978). Public comments were invited through September 1, 1978. All comments received through November 12, 1978 were considered. Written comments were received from approximately 100 sources. In addition, members of the Endowment's Section 504 Task Force representing organizations of handicapped persons, arts service organizations, and the cultural field generally, met in Washington on October 12, 1978 in order to review comments received from the public regarding the proposed regulations. Public comments and comments of the Section 504 Task Force are summarized as "Comments Leading to Changes in the Regulations" and "Comments Not Leading to Changes in the Regulations."

Comments Leading to Changes in the Regulations

1. It was suggested that § 1151.5 regarding the effect of state or local law be clarified and written in simpler, more direct language. The substituted language adopted in the final regulations should be clearer and easier to understand.

2. It was pointed out that the Summary of Proposed Rules preceding the draft regulations states that *"Subpart A* of the proposed regulations sets forth general definitions and uniform procedures for the enforcement of section 504." The comment further points out that "nowhere in *Subpart A* is mention made concerning the Endowment's intentions should recipients be found in noncompliance." *Subpart D* of the proposed and final regulations includes provisions regarding enforcement of section 504. For additional clarification in connection with the question of Endowment enforcement and compliance procedures under section 504, an Appendix A is added to the regulations setting forth the Endowment's procedures for compliance under Title VI of the Civil Rights Act of 1964. These procedures will be adopted for the purpose of enforcing section 504.

3. It was recommended that § 1151.11 (b) (4), i.e., the portion of the definition of "handicapped person" which further defines the phrase, "is regarded as having an impairment" be clarified. Also, it was suggested that examples regarding this subsection be included in the regulations. This part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. As stated in Appendix A to regulations promulgated by the Department of Health, Education and Welfare (HEW), 42 FR 22686, (1977), this part includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped. It should be noted that the definition of the term "handicapped person" utilized by the Act for purposes of section 504 was amended by the Comprehensive Rehabilitation Services Amendments of 1978, Pub. L. 95–602, to exclude from the definition, in connection with employment, any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others. This amendment is consistent with the position taken by HEW regarding this issue and reflects the findings included in a legal opinion issued by the Attorney General.

4. The Task Force generally agreed that the language included in § 1151.16(b) was confusing and could be drafted in a simpler manner. The substituted language should be clearer and easier to understand.

5. It was pointed out that in section 1151.17—Specific discriminatory actions prohibited, a subsection included in HEW guidelines prohibiting a recipient from selecting the site or location of a facility that has a discriminatory effect on handicapped persons was omitted from the proposed regulations. The subsection in question appears as § 1151.17(d) of the final regulations.

6. Many comments were received in connection with § 1151.18—Illustrative examples. These comments included suggestions regarding placement of the examples within the regulations. It specifically was recommended during the October 12th Task Force meeting that examples applicable to different art forms be included as separate parts in the regulations. While we seriously considered following this suggestion, in light of the technical assistance materials to be prepared and made available to recipients, inclusion of additional examples in the regulations applicable to the visual and performing arts would appear to be unnecessary. Other commenters suggested that the examples to be left out of the regulations. Various "how to" and technical questions were asked in connection with this section. It is believed that recipients can arrive at the most effective responses to such questions by consulting with local handicap organizations. In weighing the comments it was decided to retain the section on illustrative examples in the same form as appeared in the draft regulations. Various editorial and grammatical changes have been made to reflect the comments received.

7. The largest number of comments were received in connection with § 1151.22—Existing facilities. Several

organizations urged inclusion in the regulations of "Program Accessibility in Historic Properties" written by the Department of Interior. In connection with accessibility to historic properties, the Endowment intends to adopt and include in its regulations a uniform standard currently being developed by interested federal agencies.

8. Several groups suggested that the time periods for compliance set forth § 1151.22(c) should conform to those included in HEW regulations. These time periods have been revised to reflect the standards set forth in HEW guidelines.

9. It was suggested that the words "and usable by" be added to § 1151.22(a). This phrase was omitted inadvertently from the draft regulations and has been added.

10. It was suggested that § 1151.32(b)(2) listing some of the actions that constitute reasonable accommodation include use of telecommunication devices and amplifiers on telephones. Appropriate language has been added.

11. It was suggested that § 1151.33—Employment criteria, be expanded to reflect the corresponding more detailed section included in HEW regulations. Section 1151.33 has been modified to reflect the provisions of § 84.13 of HEW regulations 42 FR 22680, (1977).

12. One commenter stated that § 1151.44—Endowment enforcement and compliance procedures was unclear in that it does not specify who may bring a complaint, in what manner the complaint would be handled, and what standards would be employed in determining the validity of the complaint. Section 1151.44 of the proposed regulations incorporates by reference Endowment compliance procedures applicable to Title VI of the Civil Rights Act of 1964 and found at 45 CFR 1110.8–1110.11. The final regulations include an Appendix A setting forth the specific procedures.

13. A number of organizations made the following general comments regarding the regulations: (1) It was suggested that the final regulations be made available in braille and cassette tapes and that their availability be announced in the final regulations; (2) a number of groups indicated that certain terms and phrases are ambiguous and suggested that the language be more specific; and, (3) workshops scheduled at various locations were suggested as a means of helping arts organizations understand and plan compliance with the regulations.

The final regulations are available in braille and cassette tapes. Requests for copies of the regulations should be addressed to Office of the General Counsel, National Endowment for the Arts, 2401 E Street, N.W., Washington, D.C. 20506.

Comments Not Leading to Changes in the Regulations

1. In § 1151.3(e), it was recommended that the definition or "recipient" include a definition of "subrecipients," i.e., programs and activities with subgrants or subcontracts from recipients. The definition of "recipients" includes agencies, institutions, organizations or other entities to which federal assistance is extended through another recipient.

2. It was urged that procurement contracts and contracts of insurance or guaranty be included in the § 1151.3(f) definition of "federal financial assistance." Procurement contracts are covered by the Department of Labor's regulation under section 503 of the Rehabilitation Act. Endowment contracts that are not considered procurement contracts, i.e., contracts of assistance or cooperative agreements would not fall within the "procurement" exclusion and will be reviewed on an ad hoc basis regarding coverage under section 504.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. This is in accordance with the following language included in Appendix A of HEW's final regulations, 42 FR 22685, (1977). "There is no indication however, in the legislative history of the Rehabilitation Act of 1973 or of the amendment to that Act in 1974, that Congress intended section 504 to have a broader application in terms of federal financial assistance than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as Titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under Title VI, we think it unlikely that Congress intended section 504 to apply to such contracts."

3. In connection with § 1151.4 regarding the requirement that a recipient notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing that it does not discriminate on the basis of handicap in violation of section 504, one group questioned why "those with impaired vision or hearing" are singled out. This sentence adopts the language appearing in § 84.8 of HEW regulations, 42 FR 22680, (1977). It would seem that the words "including those with impaired vision or hearing" appear in that section in order to emphasize a recipient's obligation to ensure that notice is not limited solely to print media.

4. It was recommended that § 1151.12(a) defining qualified handicapped person should read, "a qualified handicapped person means with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the job in question." The definition as presently drafted implicitly includes a qualified handicapped person who requires no accommodation to be made to his or her particular needs. It was suggested that the definition of qualified handicapped person with respect to services is inadequate since the traditional eligibility requirements, i.e., vision in order to view an exhibition of visual art, would exclude a visually impaired person. This comment misconstrues the phrase "essential eligibility requirements" for the receipt of such services included in § 1151.12(b). As used in that section, eligibility requirements with respect to cultural events would mean paying the standard price of admission, i.e., buying a ticket for a ballet performance or symphony concert. Finally, one commenter stated that the definition of handicap is "so broad as to be all inclusive, and that the definition as it now stands includes nearly all Americans."

Guidelines issued by HEW, 43 FR 2132, (1978), in accordance with Executive Order 11914 include the definition of handicapped person which conforms to the statutory definition of handicapped person applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93–516. Endownment proposed section 504 regulations adopt the statutory definition of handicapped persons as required by HEW guidelines. In response to comments regarding the broad definition of handicapped person, it was determined by HEW that there was no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps.

5. One commenter expressed concern regarding use of the word "appropriate" in § 1151.16(c). A question was raised in connection with how an appropriate setting would be determined and by whom. We believe that this word affords recipients maximum flexibility in connection with meeting their obligations under the regulations and satisfying the needs of the handicapped persons they serve. It is hoped that prior

to determining what settings are "appropriate to the needs of handicapped persons" recipients will make every effort to obtain maximum input from organizations representing handicapped persons.

6. In connection with § 1151.17—Specific discriminatory actions prohibited, it was suggested that subsections (a) (3) and (4) include the phrase "similar in benefit" in addition to the word "effective" in order to ensure that recipients provide assistance and services that are similar in benefit. Addition of this language would be unnecessary since § 1151.17(a)(4) specifically prohibits the provision of different benefits or services to handicapped persons.

It also was pointed out that as used throughout § 1151.17 the words "equal" or "effective" would be difficult to interpret. As indicated in Appendix A of HEW regulations, 42 FR 22687, (1977), the term "equally effective" is intended to encompass the concept of equivalent, as opposed to identical services and to acknowledge that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may be necessary. To be equally effective, however, an aid, benefit or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results. Consequently, although a blind person may be unable to see a ballet and a deaf person may be unable to hear a concert, no handicapped person may be excluded from a program because of the lack of an appropriate aid. Recipients need not have all such aids on hand at all times, as long as a schedule is established and adhered to regarding for example, availability of a reader.

7. It was noted that § 1151.17(c) (1), (2), (3) does not make clear whether the requirement applies generally to the administration of the receiving organization or to the specific use of federal funds. According to HEW guidelines, 43 FR 2134, (1978), the main application of this provision is to state agencies that receive federal funds and then distribute the funds to other entities. These state agencies are obligated to develop methods of administering the distribution of federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by the second-tier recipients or by the manner in which the funds are distributed. The prohibitions of this paragraph, as well as of paragraph (b)(1), apply not only to direct actions of a recipient but also to actions committed through contractual agreements or similar arrangements. This provision is based on the premise that a recipient should not be able to do indirectly what it is prohibited from doing directly.

8. In connection with the portion of the regulations regarding program accessibility, one commenter objected to the inclusion of "physical accessibility" information under the head "program accessibility." It was suggested that program accesssibility should refer to program content and format and that the regulations should be organized according to the categories of physical accessibility, program accessibility and employment.

HEW's Section 504 Policy Interpretation No. 3, 43 FR 36034, (1978), states that "the section 504 regulation was carefully written to require 'program accessibility' not 'building accessibility' thus allowing recipients flexibility in selecting the means of compliance." Consequently, physical or building accessibility constitutes one aspect of the general program accessibility requirement included in the regulations, i.e., program accessibility for the mobility impaired. According to Appendix A of HEW regulations, 42 FR 22689, (1977), structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible or usable.

9. It was suggested that some consideration be given to exempting organizations which lease facilities from program accessibility requirements as long as bona fide efforts are made to use a hall that more nearly complies with the requirements of the regulations. According to HEW Policy Interpretation No. 3, 43 FR 36034, (1978), "because the standard for program accessibility is flexible" the regulation does not allow for waivers. Performing arts groups which lease space should explore possibilities of periodically offering performances in alternative accesssible spaces.

10. In connection with § 1151.23—New Construction, it was suggested that language be added to include new facilities or "parts of facilities." This would be unnecessary since parts of facilities would be covered by the second sentence of § 1151.23 regarding alterations to existing facilities.

11. It was suggested that language be included regarding consultation with handicapped organizations in connection with plans to construct or alter facilities. Of course, while maximum consultation with respect to all aspects of carrying out the regulations is encouraged and considered desirable, it would appear redundant to include the requested language in light of reference in § 1151.23 to use of ANSI standards.

12. Several commenters expressed concern regarding use of vague, ambiguous terms in § 1151.32—Reasonable accommodation, such as "reasonable," "reasonable accommodation," and "undue hardship." Guidance regarding the meaning of "reasonable accommodation" may be found in § 1151.32(b). Section 1151.32(b) lists some actions that constitute reasonable accommodation. It should be pointed out that the list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed. Paragraph (c) of the section sets forth factors that the Endowment will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small ballet company might not be required to expend more than a nominal sum to accommodate a deaf employee while it would not constitute an undue hardship for a large state arts agency to accommodate a deaf employee by providing an interpreter.

13. One commenter suggested that the exceptions to the prohibition against preemployment inquiries included in § 1151.34(b) could lead to abuse. Section 1151.34(a) specifies limited instances in which preemployment inquiries will be considered permissible. The section goes on to specify certain safeguards that must be followed by the employer. These safeguards should serve to limit the opportunities for abuse in connection with preemployment inquiries.

14. It was suggested that transferees of personal property purchased with federal financial assistance be required to submit assurances of compliance under section 1151.41. Transferees of personal property purchased with federal financial assistance would not fall within the definition of recipients included in § 1151.3(e) of the regulations. Consequently, requiring transferees of personal property to submit assurances of compliance would extend the coverage of the regulations beyond their intended scope.

15. Several comments were received in connection with § 1151.42—Self-evaluation. Most of the comments consisted of questions regarding the form of the self-evaluation, administration of the self-evaluation process, and whether submission of self-evaluations are required to be included in applications. Self-evaluations are to be conducted by recipients for their own benefit in order to determine whether their policies or practices may discriminate against handicapped persons and to initiate steps to modify any discriminatory policies and practices and their effects. This section was included to encourage recipients to make initial assessments of their practices regarding handicapped persons as a first step towards compliance with the regulations. Self-evaluations are for the benefit of recipients and need not be submitted with grant applications.

As indicated in § 1151.42, self-evaluations are to be completed by recipient organizations within six months after the effective date of the regulations. A question has been raised regarding the time-frame for preparation of self-evaluations by new recipients of Endowment funds after the effective date of the regulations. Subsequent to the effective date of the regulations, it is understood that prior to applying for Endowment financial assistance, new applicants will have given preliminary consideration to methods of making their proposed project or activity accessible to handicapped persons.

The primary authors of this rulemaking are: Robert Wade, General Counsel, and Susan Liberman, Assistant to the General Counsel, telephone, 202–634–6588.

Dated: April 12, 1979.

Livingston L. Biddle, Jr.,
Chairman, National Endowment for the Arts.

In consideration of the foregoing, a new part 1151 is added to Title 45 of the Code of Federal Regulations to read as follows:

Subpart A—General Provisions

Sec.

1151.1 Purpose.
1151.2 Application.
1151.3 Definitions.
1151.4 Notice.
1151.5 Inconsistent state laws and effect of employment opportunities.
1151.6–1151.10 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons

1151.11 Handicapped Person.
1151.12 Qualified Handicapped Person.
1151.13–1151.15 [Reserved]

Subpart C—Discrimination Prohibited

General

1151.16 General prohibitions against discrimination.
1151.17 Specific discriminatory actions prohibited.
1151.18 Illustrative examples.
1151.19–1151.20 [Reserved]

Program Accessibility

1151.21 Discrimination prohibited.
1151.22 Existing facilities.
1151.23 New Construction.
1151.24 [Reserved—Historic Properties]
1151.25–1151.30 [Reserved]

Employment

1151.31 Discrimination prohibited.
1151.32 Reasonable accommodation.
1151.33 Employment criteria.
1151.34 Preemployment inquiries.
1151.35–1151.40 [Reserved]

Subpart D—Enforcement

1151.41 Assurances required.
1151.42 Self-evaluation.
1151.43 Adoption of grievance procedures.
1151.44 Endowment enforcement and compliance procedures.
1151.45–1151.50 [Reserved]

Authority: Executive Order 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93–112) (29 U.S.C. 794), Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95–602).

Subpart A—General Provisions

§ 1151.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

§ 1151.2 Application.

This part applies to each recipient of financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

§ 1151.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, (Pub. L. 93–516, 29 U.S.C. 706 *et seq.*) and the Comprehensive Rehabilitation Services Amendments of 1978, (Pub. L. 95–602).

(b) "Section 504" means section 504 of the Act.

(c) "Endowment" means the National Endowment for the Arts.

(d) "Chairman" means the Chairman, National Endowment for the Arts.

(e) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Endowment provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers of leases of such property for less than fair market value or for reduced consideration; and,

(ii) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the Federal Government.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

§ 1151.4 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or employment in, its programs and activities. Methods of initial and continuing notification may include the posting of notices, publication in print, audio, and visual media, placement of notices in a recipient's publication, and distribution of other written and verbal communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the

requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 1151.5 Inconsistent State laws and effect of employment opportunities.

(a) Recipients are not excused from complying with this part as a result of state or local laws which limit the eligibility of handicapped persons to receive services or to practice a profession or occupation.

(b) The presence of limited employment opportunities in a particular profession does not excuse a recipient from complying with the regulation. For example, a music school receiving Endowment financial assistance could not deny admission to a qualified blind applicant because a blind singer may experience more difficulty than a nonhandicapped singer in finding a job.

§§ 1151.6–1151.10 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons.

§ 1151.11 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of section 504, in connection with employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional and mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 1151.12 Qualified handicapped person.

"Qualified handicapped person" means:

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 1151.13–1151.15 [Reserved]

Subpart C—Discrimination Prohibited

General

§ 1151.16 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

(b) These regulations do not prohibit the exclusion of nonhandicapped persons or persons with a specific type of handicap from the benefits of a program limited by federal statute or executive order to handicapped persons or persons with a different type of handicap.

(c) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Endowment financial assistance because of the absence of appropriate auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(e) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 1151.17 Specific discriminatory actions prohibited.

(a) A recipient, in providing any aid, benefit, service, or program either directly or through contractual, licensing, or other arrangements, shall not, on the basis of handicap:

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, program, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(c) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(3) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(d) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance; or

(2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(e) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with federal financial assistance.

§ 1151.18 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Arts.

(1) A museum exhibition catalogue or small press editions supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications;

(2) A theatre performance supported by federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) A performing arts organization receiving federal funds for a specific program offered in an inaccessible facility may arrange to provide a reasonable opportunity for that program to be offered to the public at large in an alternative accessible space; e.g., a theatre offering four different plays a season may offer at least one performance of each play in an alternative accessible space.

(4) Recipients of federal funds should make every effort to assure that they do not support organizations or individuals that discriminate;

(5) A handicapped person with experience and expertise equal to qualification standards established by a planning or advisory board may not be excluded from participation on the board on the basis of handicap. This does not mean that every planning or advisory board necessarily must include a handicapped person.

(b) Despite the existence of permissible separate or different programs, e.g., periodic performances in alternative accessible spaces, a physically handicapped person who wishes to be, and can be, escorted to a seat, may not be denied such access to an otherwise inaccessible theatre.

(c) State arts agencies are obligated to develop methods of administering federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(d) In the event Endowment funds are utilized to construct, expand, alter, lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(e) In carrying out the mandate of section 504 and these implementing regulations recipients should make every effort to administer Endowment assisted programs and activities in a setting in which able-bodied and disabled persons are integrated, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted to enjoy the benefits of a tactile experience in a museum.

§§ 1151.19–1151.20 [Reserved]

Program Accessibility

§ 1151.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient may comply with the requirement of paragraph (a) of this section through alteration of existing facilities, the construction of new facilities, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes are necessary to make programs or activities in existing facilities accessible such changes shall be made as soon as possible but in no event later than three years after the effective date of this part.

(d) Transition plan. In the event structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

Upon request, the recipient shall make available for public inspection a copy of the transition plan. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

§ 1151.23 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI A 117.1—1961 [R 1971]) (Copies obtainable at $2.75 each from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, single copies available free from Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201, or the National Easter Seal Society, 2023 West Ogden Avenue, Chicago, Illinois 60612) shall constitute compliance with paragraph (a) of this section. Departures from the ANSI standards by the use of comparable standards shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

§ 1151.24 [Reserved—Historic Properties]

§§ 1151.25-1151.30 [Reserved]

§ 1151.31 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipients, and with organizations providing training and apprenticeship programs.

(d) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absences, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 1151.32 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition, or modification of equipment or devices, such as use of telecommunication devices and amplifiers on telephones, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

§ 1151.33 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

§ 1151.34 Preemployment inquiries.

A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(a) When a recipient is taking remedial action to correct the effects of

past discrimination, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided, that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(b) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided, that:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(c) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§ 1151.35–1151.40 [Reserved]

Subpart D—Enforcement

§ 1151.41 Assurances required.

(a) An applicant for federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Chairman, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Endowment.

(b) Duration of obligation.

(1) In the case of federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(2) In all other cases the assurance will obligate the recipient for the period during which federal financial assistance is extended.

(c) Covenants.

Where property is purchased or improved with federal financial assistance, the recipient shall agree to include in any instrument effecting or recording any transfer of the property a covenant running with the property assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

§ 1151.42 Self evaluation.

(a) A recipient shall within six months of the effective date of this part:

(1) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(3) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(4) Maintain on file, make available for public inspection, and provide to the Endowment upon request, for at least three years following completion of the self-evaluation:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and,

(iii) A description of any modifications made and of any remedial steps taken.

(5) The completed self-evaluation should be signed by a responsible official designated to coordinate the recipient's efforts in connection with this section.

§ 1151.43 Adoption of grievance procedures.

A recipient may adopt an internal grievance procedure in order to provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. A responsible official should be designated to coordinate the recipient's efforts in connection with this section. Such procedures need not be established with respect to complaints from applicants for employment.

§ 1151.44 Endowment enforcement and compliance procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in section 1110.8–1110.11 of Part 1110 of this Title.

§§ 1151.45–1151.50 [Reserved]

[FR Doc. 79-11884 Filed 4-16-79; 8:45 am]
BILLING CODE 7537-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcast Services; Editorial Amendments Concerning Re-Regulation of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Editorial corrections and clarifications in various rules on auxiliary antenna, remote control authorizations, auxiliary transmitters, and modifications of transmission systems adopted by previous Reregulation of Radio and TV Broadcasting Order.

EFFECTIVE DATE: April 25, 1979.

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

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 11, 1979.

Order. In the matter of reregulation of radio and TV broadcasting—editorial corrections.

By the Chief, Broadcast Bureau:

1. On November 2, 1978, the Commission adopted an *Order* amending certain procedural rules for the licensing of broadcast station transmitters and antenna systems. (FCC 78–788). Experience with the amended rules indicates that minor editorial corrections and clarifications are necessary so that the rules will fully comport to the original purpose of the amendments as described in the text of the implementing *Order*, to include a rule paragraph that was inadvertently omitted, and to correct typographical errors.

2. We conclude that adoption of the editorial amendments shown in the attached Appendix will serve the public interest. Prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

3. Therefore, IT IS ORDERED, That pursuant to Sections 4(i), 303(r), and 5(a)(1) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, Part 73 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix, effective April 25, 1979.

4. For further information concerning this *Order*, contact John W. Reiser, Broadcast Bureau, (202) 632–9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Federal Communications Commission.

Wallace E. Johnson,

Chief, Broadcast Bureau.

Appendix

1. In § 73.43, the introductions of paragraphs (b) and (d) are corrected to read as follows:

§ 73.43 Modification of transmission systems.

* * * * *

(b) The following modifications may be made only upon specific authority of the FCC. Application to make the changes must be filed on FCC Form 301 (FCC Form 340 for noncommercial educational stations).

* * * * *

(d) The following changes in the transmission system equipment may be made without prior authorization from or notification to the FCC. Equipment performance measurements must be made within 10 days after completing the modifications.

* * * * *

2. In § 73.66, paragraph (b)(1) is corrected to read as follows:

§ 73.66 Remote control authorizations.

* * * * *

(b) (1) An application for a construction permit to erect a new or make modifications in an existing directional antenna, subject to the sampling system requirements of § 73.68, may request remote control authorization on the permit application FCC Form 301 (FCC Form 340 for noncommercial educational stations).

* * * * *

3. In § 73.257, paragraph (a)(1) and the introduction of paragraph (d) are corrected to read as follows:

§ 73.257 Modification of transmission systems.

* * * * *

(a) (1) That would result in emission of signals outside of the authorized channel exceeding that which is permitted under § 73.317.

* * * * *

(d) The following changes in the transmission system equipment may be made without prior authorization from or notification to the FCC. Equipment performance measurements must be made within 10 days after completing the modification.

(1) * * *

* * * * *

4. In § 73.274, paragraph (a) is corrected to read as follows:

§ 73.274 Remote control authorizations.

(a) The licensee of an FM station may operate by remote control without authorization from the FCC. Written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C. within three days of commencing remote control operation. When a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the Engineer in Charge of the radio district in which the station is located. This additional notice is to include the full address, location and telephone number of the remote control point.

* * * * *

5. In § 73.557, paragraph (a)(1) and the introduction of paragraph (d) are corrected to read as follows:

§ 73.557 Modification of transmission systems.

* * * * *

(a) (1) That would result in emissions of signals outside of the authorized channel exceeding that which is permitted under § 73.317.

* * * * *

(d) The following changes in the transmission system equipment may be made without prior authorization from or notification to the FCC. Equipment performance measurements must be made within 10 days after completing the modification.

* * * * *

In § 73.639, paragraphs (c) and (c)(1), and the introduction of paragraph (d) are corrected and new paragraph (d)(3) is added to read as follows:

§ 73.639 Modification of transmission systems.

* * * * *

(c) The following modifications may be made and operation commenced without prior authorization from the FCC, provided that the modifications would not possibly affect the operation of any co-located or nearby AM station. An application for license modification filed on FCC Form 302 (FCC Form 341 for noncommercial educational stations) must be filed within 10 days following completion of the changes. Equipment performance measurements are not required for applications covering changes described in (1) and (2) below.

(1) Replacement of a non-directional antenna with one of the same or different type or number of bays, provided that the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, there is no change in the horizontal effective radiated power, and there is no increase in the radiation at any angle below the horizon in any direction.

* * * * *

(d) The following changes in the transmission system equipment may be made without prior authorization from or notification to the FCC. Equipment performance measurements must be made within 10 days after completing the modifications.

* * * * *

(3) Replacement of the FM exciter unit of the aural transmitter with one that has been acceptable for TV station use through the FCC's type acceptance procedures and that has been

demonstrated compatible with the transmitter in use.

7. Paragraph (a)(4) and paragraph (c) introduction in § 73.1670 are corrected to read as follows:

§ 73.1670 Auxiliary transmitters.

* * * * *

(a) * * *

(4) The transmission of regular programs by an AM station under a Presunrise Service Authorization (PSA).

* * * * *

(c) The following technical and operating standards apply to auxiliary transmitters:

* * * * *

8. In § 73.1675, paragraph (b) is corrected and new paragraph (c) is added to read as follows:

§ 73.1675 Auxiliary antennas.

* * * * *

(b) An application for a construction permit to install a new auxiliary antenna, or to make changes in an existing auxiliary antenna for which prior FCC authorization is required (see §§ 73.257, 73.557, or 73.639), must be filed on FCC Form 301 (FCC Form 340 for noncommercial educational stations).

(c) Authority to use a formerly licensed main antenna without changes or modifications as an auxiliary antenna may be obtained by filing FCC Form 302 (FCC Form 341 for noncommercial educational stations).

9. Section 73.685 is corrected by deletion of paragraph (i).

§ 73.685 Transmitter location and antenna system.

* * * * *

(i) [Deleted]

10. In § 73.1680, the introduction of paragraph (b) is corrected to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) Prior authority from the FCC is not required to erect and commence using an emergency antenna to restore program service to the public. However, an informal request to continue operation with the emergency antenna must be made to the FCC in Washington, D.C. within 24 hours after commencement of its use. The request is to include a description of the damage to the authorized antenna, a description of the emergency antenna, and the station operating power with the emergency antenna.

* * * * *

[FR Doc. 79-11846 Filed 4-16-79; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

FM Broadcast Station in Yucca Valley, Calif.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action, in response to a counterproposal from Jack E. Young and Nancy M. Young, assigns Class B FM Channel 295 to Yucca Valley, California, as its first FM assignment. A Class B channel was justified by recent growth in population at Yucca Valley and is expected to provide for service to large unserved and underserved areas.

EFFECTIVE DATE: May 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 10, 1979.

Report and Order (Proceeding Terminated). In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Yucca Valley, California). BC Docket No. 78-35, RM-2964, RM-3056 (See 43 FR 6111).

By the Chief, Broadcast Bureau:

1. The Commission has before it the *Notice of Proposed Rule Making* proposing to assign Channel 296A to Yucca Valley, California, as its first FM assignment in response to a petition from Israel Sinofsky. A counterproposal has been received from Jack E. Young and Nancy M. Young ("Youngs") proposing to assign Channel 295 [1] to Yucca Valley, California. Both parties filed comments, while only the Youngs submitted reply comments.

2. Yucca Valley (population 3,893) [2] is located in San Bernardino County (population 682,233) approximately 164 kilometers (102 miles) east of Los Angeles and 34 kilometers (21 miles) north of Palm Springs, California. There is no local broadcast service in Yucca Valley. It receives service from stations located in Palm Springs, Twentynine Palms and Cathedral City.

3. The Youngs urge that a Class B channel rather than a Class A channel be assigned to Yucca Valley to provide needed service to surrounding areas. They contend that a station operating with maximum Class B facilities would provide a first FM (and first nighttime aural) service to 2,535 square kilometers (975 square miles) (population figure not provided) and a second FM (and second aural) service to a 364 square kilometer (140 square miles) area which includes Big Bear City (population 5,268). Information provided by the Youngs shows extensive growth in Yucca Valley's population based on new home construction, utility accounts, a new hospital, new recreational facilities and an airport. The Youngs claim that Yucca Valley is the center of a popular recreational area near the Joshua Tree National Monument which is said to have attracted 731,822 visitors in 1976. According to the Youngs, the 1975 Special Census lists the population of Yucca Valley as 5,644 or an increase of approximately 45% since 1970. Regarding preclusion, the Youngs state that the only communities located in the affected areas which lack local aural broadcast service are Joshua Tree (population 1,211) and Desert Hot Springs (population 2,738). The availability of alternate FM channels is not indicated but in fact might be available.

4. The comments of Israel Sinofsky serve only to reconfirm his interest in the proposal to assign Channel 296A to Yucca Valley and to restate that there is a need for a Yucca Valley channel assignment.

5. Although we do not normally assign a Class B channel to a community of Yucca Valley's size, adequate justification has been provided. The benefits of a wide coverage-area station in terms of first FM and first nighttime aural and second FM and second aural service provide the basis for a Class B assignment even if some preclusion might result affecting two small communities nearby. In addition it has been shown that Yucca Valley has undergone rapid growth in recent years which can be expected to continue. In view of this, we shall approve the Class B request instead of the Class A proposal. We shall condition the assignment of Channel 295 to Yucca Valley on the use of maximum Class B facilities so as to insure that the station's signal will provide coverage to the specified unserved and underserved areas.

6. The necessary Mexican concurrence in the Channel 295 assignment has been received.

[1] Due to mileage separation requirements only one of the proposed assignments can be made.

[2] Population data are taken from the 1970 U.S. Census, as corrected.

§ 73.202 [Amended]

7. Accordingly, it is ordered, That pursuant to Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) is amended, effective with respect to the following community on May 21, 1979.

City:	*Channel No.*
Yucca Valley, California	295 [1]

[1] Any application for this channel must specify facilities of 50 kW effective radiated power and an antenna height above average terrain of 500 feet or their equivalent.

8. It is further ordered, that this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Federal Communications Commission.

Wallace E. Johnson,

Chief, Broadcast Bureau.

[BC Docket No. 78-35; RM-2964; RM-3056]

[FR Doc. 79-11851 Filed 4-16-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

FM Broadcast Station in Pinconning, Mich.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a Class A FM channel to Pinconning, Michigan, in response to a request by David C. Schaberg. The channel can be used to provide a first local aural broadcast service to Pinconning.

EFFECTIVE DATE: May 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 10, 1979.

Report and Order (Proceeding Terminated). In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Pinconning, Michigan). BC Docket No. 78-330, RM-3145.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted October 5, 1978, 43 Fed. Reg. 47577, in the above-captioned proceeding, instituted in response to a petition filed by David C. Schaberg ("petitioner"). The petition urged the assignment of Channel 265A on a hyphenated basis to the communities of Standish and Pinconning, Michigan. However, in the *Notice* it was proposed to assign the channel to Pinconning, the larger community. Petitioner reaffirmed his intention to file an application for the channel, if assigned. No oppositions to the proposal were filed.

2. Pinconning (pop. 1,320), in Bay County (pop. 117,339),[1] is located approximately 20 kilometers (32 miles) north of Bay City, Michigan. There is no local aural broadcast service in Pinconning.

3. Petitioner claims that the area is rapidly becoming a tourist center because of the availability of lake front property on Lake Huron. In support of his proposal, petitioner has submitted information with respect to Pinconning in order to demonstrate its need for a first FM assignment.

4. The Canadian Government has given its concurrence to the proposed assignment of Channel 265A to Pinconning, Michigan.

5. Upon careful consideration of the proposal herein, the Commission believes it would be in the public interest to assign Channel 265A to Pinconning, Michigan. The channel would provide for a first local aural broadcast service to the community. The assignment can be made in conformity with the minimum distance separation requirements.

§ 73.202 [Amended]

6. Accordingly, it is ordered, that effective May 21, 1979, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended as it pertains to the community listed below:

City:	*Channel No.*
Pinconning, Michigan	265A

7. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

8. For further information on this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

9. It is further ordered, that this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

Federal Communications Commission.

Wallace E. Johnson,

Chief, Broadcast Bureau.

[BC Docket No. 78-330; RM-3145]

[FR Doc. 79-11848 Filed 4-16-79; 8:45 a.m.]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1970 U.S. Census.

47 CFR Part 73

FM Broadcast Stations in Gouverneur and Ogdensburg, N.Y.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a Class A FM channel to Ogdensburg, New York, and substitutes one Class A channel for another at Gouverneur, New York. It also modifies the license of Gouverneur Station WLUF(FM) now operating on Channel 224A to specify operation on Channel 237A. These changes were proposed by Wireless Works, Inc., licensee of AM Station WSLB, Ogdensburg, in order to provide that community with its first FM assignment.

EFFECTIVE DATE: May 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 11, 1979.

Report and Order. (Proceeding Terminated). In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Gouverneur and Ogdensburg, New York). BC Docket No. 78-363 RM-3158.

By the Chief, Broadcast Bureau:

1. The Commission has under consideration its *Notice of Proposed Rule Making and Order to Show Cause*, adopted October 27, 1978, 43 Fed. Reg. 51655. The subject proposal was filed by Wireless Works, Inc. ("petitioner"), licensee of full-time AM Station WSLB, Ogdensburg, New York. It involves the assignment of FM Channel 224A to Ogdensburg, New York, and the substitution of Channel 237A for Channel 224A at Gouverneur, New York. DeHart Broadcasting Corporation is the licensee of FM Station WLUF which operates on Channel 224A at Gouverneur. Petitioner filed the only comments.

2. Ogdensburg (pop. 14,554) [1], in St. Lawrence county (pop. 112,309), is located in northeastern New York along the Canadian border, approximately 193 kilometers (120 miles) north of Syracuse, New York. It has one full-time AM station (WSLB), licensed to petitioner. The assignment of Channel 224A to Ogdensburg and the substitution of Channel 237A for Channel 224A at

[1] Population figures are taken from the 1970 U.S. Census.

Gouverneur comply with the domestic minimum distance separation requirements.[2]

3. Petitioner has submitted sufficient demographic and economic data which demonstrates the need for a first assignment to Ogdensburg. It notes that the proposed channel would also provide service to the communities and rural areas around Ogdensburg whose residents are oriented to Ogdensburg for shopping, culture and other activities. In supporting comments, petitioner reaffirms its intention to apply for a construction permit to operate on the proposed channel, if assigned. It also expresses its intent to reimburse DeHart Broadcasting Corporation, licensee of FM Station WLUF now operating on Channel 224A in Gouverneur, New York, for reasonable expenses incurred in changing over from its present channel to Channel 237A.

4. After careful consideration of the proposals, we conclude that it would be in the public interest to substitute Channel 237A for Channel 224A at Gouverneur, New York, and to assign Channel 224A to Ogdensburg, New York. In reaching our decision, consideration was given to the fact that this proposal represents a first FM assignment to Ogdensburg, New York. DeHart Broadcasting Corporation has failed to request a hearing on or to object to the proposed modification of its license to specify Channel 237A. When, as here, the channel of an operating station must be changed in order to make possible another assignment in the Table, it is our policy to require the party benefitting from the assignment to reimburse the operating station for reasonable expenses in connection with the change. Assisted by the guidelines furnished in other cases, such as *Circleville, Ohio,* 8 F.C.C. 2d 159 (1967), the appropriate costs making up the "reasonable" reimbursement figures are generally left to the good faith judgment of the parties eventually involved, subject to Commission approval in the event of disagreement.

§ 73.202 [Amended]

5. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, That effective May 21, 1979, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with respect to the communities listed below:

City:	*Channel No.*
Gouverneur, New York	237A
Ogdensburg, New York	224A

6. It is further ordered, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by DeHart Broadcasting Corporation for Station WLUF(FM), Gouverneur, New York, is modified, effective May 21, 1979, to specify operation on Channel 237A instead of Channel 224A. The licensee shall inform the Commission in writing no later than May 21, 1979, of its acceptance of this modification. Station WLUF(FM) may continue to operate on Channel 224A for one year from the effective date of this action or until it is ready to operate on Channel 237A, or the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 237A the licensee of Station WLUF(FM) shall submit to the Commission the technical information normally requested of an applicant for Channel 237A.

(b) At least 10 days prior to commencing operating on Channel 237A the licensee of Station WLUF(FM) shall submit the measurement data required of an applicant for a broadcast station license; and

(c) The licensee of Station WLUF(FM) shall not commence operation on Channel 237A without prior Commission authorization.

7. For further information on this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

8. It is further ordered, that this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[BC Docket No. 78–363; RM–3158]
[FR Doc. 79–11850; Filed 4–16–79; 8:45 am]
BILLING CODE 6712–01–M

---

47 CFR Part 73

Television Broadcast Station in Salem, Oreg.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein reserves Channel 3 for noncommercial educational television use at Salem, Oregon, at the request of the State Board of Higher Education of the State of Oregon. This action would reflect the actual operation of Station KVDO–TV on this channel assignment. The Commission also deleted the educational reservation on Channel 22 in Salem since no present interest was expressed for its use.

EFFECTIVE DATE: May 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 11, 1979.

Report and Order (Proceeding Terminated). In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Salem, Oregon). BC Docket No. 78–148, RM–2694.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the *Notice of Proposed Rule Making,* adopted May 5, 1978, 43 FR 20517, which invited comments on a petition filed by the State Board of Higher Education of the State of Oregon ("petitioner"), licensee of Station KVDO–TV, Salem, Oregon, proposing the reservation of television Channel 3, assigned to Salem, Oregon, for noncommercial educational use. The *Notice* also proposed the deletion of the reservation on Channel 22 at Salem. Comments were filed by petitioner.

2. Salem (pop. 68,296), seat of Marion County (pop. 151,309)[1] and capital of the State of Oregon, is located in northwest Oregon, about 80 kilometers (50 miles) south of Portland. Salem is currently assigned VHF Channel 3 (on which petitioner's Station KVDO–TV operates), and UHF Channels *22 and 32. Both of these channels are vacant and unapplied for.

3. Petitioner states that it presently operates various noncommercial educational stations in the State of Oregon, including Station KVDO–TV. Petitioner asserts that reserving Channel 3 would reflect the manner in which it is presently operating and recognize the role of this station as part of the comprehensive plan to provide noncommercial educational television service to the State.

4. In the *Notice* we proposed to delete the reservation on Channel 22 since no interest in a second reserved channel in Salem was expressed. In its comments, petitioner opposed this, stating that it is

[2] The substitution of Channel 237A for Channel 224A at Gouverneur would be short-spaced to an existing Canadian assignment of Channel 238C1 at Belleville, Ontario. However, no interference would occur within the protected contour of either station, and the Canadian Government has given its concurrence to the Gouverneur substitution.

[1] Population figures are taken from the 1970 U.S. Census.

presently studying options available to it for relocating Channel 3, presently in Salem, and Channel 7 at Corvallis, so that it might reduce the area of overlap and reach other communities not now served by an educational television station. Relocation of Channel 3, it contends, would also afford the petitioner an opportunity to eliminate the short-spacing between Station KVDO–TV, Channel 3 in Salem, and Station KATU, Channel 2 in Portland, which has troubled both stations for years. Petitioner asserts that it would not likely propose relocation of Channel 3 and 7 unless Channel 22 remains reserved. It submits, finally, that the educational reservation on channel 22 should be retained so that petitioner may have the opportunity to construct a station on this assignment after relocation of Channels 3 and 7.

5. We believe it would be in the public interest to reserve Channel 3 in Salem, Oregon, for noncommercial educational use since it would reflect the manner in which it is presently operating. However, we are not persuaded that the reservation on Channel 22 should be retained. No expression of interest has been shown for its use at this time and petitioner's reasons for retaining it are conjectural at best. Moreover, on June 7, 1978, the Commission adopted a *Notice of Proposed Rule Making* (BC Docket No. 78–165) concerning multiple ownership rules in which it proposed, among other things, limiting the number of stations a given educational entity could obtain if their coverage areas would overlap. At this point it is not possible to determine what rules might be adopted or their possible effect on petitioner's future plan to obtain another noncommercial educational television channel. In any case, both Channels 22 and 32 will be avilable for noncommercial educational as well as commercial application. Thus, if not barred by multiple ownership considerations, we can address the possibility, in a future rule making proceeding, of moving the Channel *3 assignment from Salem and in that context consider the need for reserving a UHF assignment for noncommercial educational use.

6. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §0.281 of the Commission's Rules.

7. Canadian concurrence has been obtained for the reservation of Channel 3 for noncommercial educational use at Salem, Oregon.

§ 73.606 [Amended]

8. Accordingly, it is ordered, That effective May 21, 1979, the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) is amended as follows for the community listed below:

City:	*Channel No.*
Salem, Oregon	*3+, 22, 32

9. It is further ordered, that this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[BC Docket No. 78–148; RM–2694]
[FR Doc. 79–11849 Filed 4–16–79; 8:45 a.m.]
BILLING CODE 6712–01–M

---

47 CFR Part 73

Television Broadcast Station in Tomah, Wis.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns UHF television Channel 43 to Tomah, Wisconsin, in response to a petition filed by Tomah-Mauston Broadcasting Company. The proposed television station would provide a first local television broadcast service to Tomah and Monroe County and could also render television service to a large number of rural residents in the area.

EFFECTIVE DATE: May 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 10, 1979.

Report and Order (Proceeding Terminated). In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Tomah, Wisconsin). BC Docket No. 78–325, RM–3100.

By the Chief, Broadcast Bureau:

1. The Commission has before it the *Notice of Proposed Rule Making*, 43 Fed. Reg. 46875, proposing the assignment of UHF television Channel 43 to Tomah, Wisconsin. Tomah-Mauston Broadcasting Company ("petitioner"), licensee of Stations WTMB and WTMB–FM (Channel 255), Tomah, Wisconsin, filed a petition requesting the deletion of Channel 25 from LaCrosse, Wisconsin, and its assignment to Tomah. However, in the *Notice* we stated that a technical analysis indicated future channel assignment flexibility in the Tomah area could be maintained if Channel 43 were assigned to this community. It noted that this would not be true if Channel 25 were deleted from LaCrosse and assigned to Tomah. On this basis Channel 43 was proposed for assignment to Tomah. Petitioner filed supporting comments and stated it would apply for the proposed channel, if assigned.

2. Tomah (pop. 5,647), in Monroe County (pop. 31,610),[1] is located in west central Wisconsin. Tomah presently has no local television broadcast service.

3. Petitioner asserts that since there is no local television broadcast facility in Tomah or Monroe County, a local television station would greatly assist area residents to become aware of local needs and problems and would provide a means for local visual self-expression. It states, further, that the proposed station would provide the only daily visual communication for a large number of rural residents, and a portion of this area would receive its second, and in some cases its first, city-grade television signal. Several letters from citizens in the area have been submitted expressing their interest and support of the proposed assignment to Tomah.

4. In view of the foregoing, we conclude that it would be in the public interest to assign Channel 43 to Tomah, Wisconsin. It would provide a first local television broadcast service to Tomah and Monroe County and would also render television service to a large number of rural residents in the area.

§ 73.606 [Amended]

5. Accordingly, it is ordered, that effective May 21, 1979 the Television Table of Assignments, § 73.606(b) of the Commission's Rules is amended with regard to the city listed below:

City:	*Channel No.*
Tomah, Wisconsin	43

6. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

8. It is further ordered, that this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

[1] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[BC Docket No. 78-325; RM-3100]
[FR Doc. 79-11852 Filed 4-16-79; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Distribution of Covered Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Third Revised Service Order No. 1308.

SUMMARY: The Illinois Central Gulf Railroad Company is unable to furnish individual shippers with jumbo covered hopper cars for consecutive shippers of grain as required by the applicable tariffs. Third Revised Service Order No. 1308 waives the consecutive-trip provisions of the applicable tariffs, enabling this railroad to make a more equitable distribution of its supply of covered hopper cars among all potential users of these cars.

DATES: *Effective 11:59 p.m., April 15, 1979. Expires when modified or vacated by order of this Commission.*

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided April 11, 1979.

An acute shortage of covered hopper cars for transporting shipments of grain, grain products, soybeans, or soybean meal exists on the Illinois Central Gulf Railroad Company (ICG). The ICG has published certain rates in Illinois Central Gulf Tariffs 604-A, ICC 92, Item 350; and 608, and ICC 77, Item 350; and 609, ICC 99, Item 350, which require shipment of five (5) consecutive trips of grain. The consecutive-trip provisions of these tariff items are preventing the ICG from making an equitable distribution of these covered hopper cars among all prospective shippers having a need to use such cars. The ICG has requested authority to waive the consecutive-trip provisions of the tariff rules to enable them to continue to offer shippers the benefit of the lowest level of freight rates published in these items, while at the same time, making a fair and equitable distribution of their 100-ton covered hopper cars among the potential users of these cars.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty day's notice.

It is ordered,

§ 1033.1308 Distribution of covered hopper cars.

(a) The Illinois Central Gulf Railroad Company (ICG) is authorized to waive the five-consecutive-trip requirements applicable to shipments of grain or soybeans published in ICG Tariffs 604-A ICC 92, Item 350; 608, ICC 77, Item 350; and 609, ICC 99, Item 350, supplements thereto or reissues thereof. All other provisions of these tariffs shall remain fully in effect.

(b) *Rules and Regulations Suspended.* The operation of all other tariff provisions or of other rules and regulations insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:59 p.m., April 15, 1979.

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126))

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Secretary.

[3rd Rev. S.O. No. 1308]
[FR Doc. 79-11944 Filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Fishery Closures

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of Fishery closures.

SUMMARY: This notice closes the cod and haddock fisheries in the Gulf of Maine for the 61-125 gross registered ton (GRT) vessel class, effective April 22, 1979. The closure is based on a projection that the vessel class will have attained its annual quotas for cod and haddock by that date.

DATE: The closure is effective as of 0001 hours EST, April 22, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Robert H. Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone: (617) 281-3600.

SUPPLEMENTARY INFORMATION: The Gulf of Maine quotas for the 61-125 GRT vessel class for the current fishing year (October 1, 1978-September 30, 1979) are 1,147 metric tons (mt) of cod and 813 mt of haddock. As of March 15, 1979, this class had harvested 94 percent of its cod quota and 93 percent of the haddock quota.

The Acting Regional Director has projected that this class will have taken its entire annual quotas by April 22, 1979. The Fishery Management Plan for Atlantic Groundfish, upon which the Part 651 regulations are based, specifies that annual quotas are not to be exceeded. Therefore the Assistant Administrator for Fisheries, under § 651.24(c), has determined that the two fisheries will be closed effective April 22, 1979.

During the period of closure, which will continue until the end of the fishing year, the vessel class will be limited to an incidental catch of cod and haddock under § 651.24(d), as follows:

1,000 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.

Appendix B to the regulations, which contains the catch limitations by vessel class, species, and area, has been revised to conform with the actions stated in this notice and is reprinted at the end of this document.

Signed at Washington, D.C., this 12th day of April, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Part 651 is amended by revising Appendix B as follows:

Appendix B.—*Catch Limitations*

[Revised—Effective Apr. 22, 1979]

Vessel class	Gulf of Maine		Georges Bank and South	
	Limits	Overruns	Limits	Overruns
COD (POUNDS/WEEK)				
0–60 GRT	2,500	0	4,900	0
61–125 GRT	Closed April 22		9,800	0
Over 125 GRT	Closed January 1		14,000	0
Fixed gear	5,000	0	13,000	0
HADDOCK (POUNDS/WEEK)				
0–60 GRT	2,500	0	3,500	0
61–125 GRT	Closed April 22		7,000	0
Over 125	Closed January 1		10,000	0
Fixed gear	8,000	0	8,000	0
YELLOWTAIL FLOUNDER [1]				
	West of 69° West		East of 69° West	
0–60 GRT	2,000		5,000	
61–125 GRT	2,000		5,000	
Over 125 GRT	2,000		5,000	

[1] Pounds per week or trip, whichever time period is longer. A vessel may land no more than 5,000 pounds, even if it fished on both sides of the 69° W. line. No overruns are allowed.

[FR Doc. 79-11881 Filed 4-16-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 1979

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Parts 271, 272]

Food Stamp Act of 1977

Correction

In FR Doc. 79–10929, published at page 21541, on Tuesday, April 10, 1979, in the third column, in the third line, the telephone number reading "(202) 477–6535.", should be corrected to read "(202) 447–6535."

BILLING CODE 1505–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Parts 271, 275]

Food Stamp Act of 1977; Performance Reporting System

Correction

In FR Doc. 79–10928 appearing at page 21504 in the **Federal Register** for Tuesday, April 10, 1979, in § 275.7, paragraph (g)(2) was inadvertantly omitted. Paragraph (g)(2) should be inserted on page 21530, in the first column, immediately above the heading for § 275.8 to read as follows:

(2) States may eliminate bank issuance offices from the sample frame for issuance provided the State can demonstrate that over time the bank(s) being eliminated from the frame has consistently been in full compliance with Food Stamp Program requirements. To demonstrate such compliance the bank(s) must have been reviewed at least twice in the four year period preceding the ME review without detection of any deficiency. Whenever a bank issuance office is eliminated from the issuance sample frame it must be identified in the review plan described in § 275.9(b).

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR 1491]

CCC Intermediate Credit Export Sales Program for Breeding Animals (GSM–201)

Correction

In FR Doc. 79–10403 appearing at page 20164 in the issue for Wednesday, April 4, 1979, make the following corrections:

(1) On page 20166, in § 1491.2, in the middle column, in subparagraph (s), delete the second "U.S. port".

(2) On page 20173, in § 1491.21, in the first column, under the heading, "Appendix to Exhibit I—Minimum Body Conformation Specification for Females", in the first line, insert the words, "the minimum" between the words "meeting" and "weight".

BILLING CODE 1505–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

Rural Telephone Program; Proposed Revision of REA Bulletin 384–3 to Announce a Proposed Revision of Addendum No. 1 to REA Form 525, Central Office Equipment Contract

AGENCY: Rural Electrification Administration.

ACTION: Proposed Rule.

SUMMARY: REA proposes to revise REA Bulletin 384–3 (1) to announce a change in Addendum No. 1 (7–78) to REA Form 525, Central Office Equipment Contract (Including Installation). The change will provide that liquidated damages shall be the exclusive measure of damages for failure by the bidder to have effected the completion of installation within the time agreed upon in the contract. The present contract and Addendum No. 1 permit the cumulation of remedies, thereby implying that it is possible to obtain more than just liquidated damages for failure to complete the installation on time. This change in Addendum No. 1 is being made to eliminate this possibility and make liquidated damages the sole measure of damages for failure to complete the installation on time, (2) to prescribe a method of handling situations where the delivery of special features extend beyond the specified completion date in the contract, and (3) to make the use of Addendum No. 1 optional in the purchase of additional equipment.

DATE: Public Comments must be received by REA no later than: June 18, 1979.

ADDRESS: Persons interested in the proposed change to Addendum No. 1 to REA Form 525 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355–S, U.S. Department of Agriculture, Washington, D.C. 20250. (Copies of the proposed revisions of REA Bulletin 384–3 and Addendum No. 1 to REA Form 525 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.)

An impact analysis for this proposed action has been prepared and is available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. Maynard S. Knapp, Chief, Central Office Equipment Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1334–S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–5773.

Dated: April 10, 1979.

John H. Amesen,
Acting Assistant Administrator-Telephone.

[FR Doc. 79–11789 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 9]

Public Records; Advance Notice of Proposed Rule Making

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rule making.

SUMMARY: In keeping with the policy of E.O. 12044, "Improving Government Regulations," the NRC is issuing for public comment an advance notice of proposed rule making which would revise the Commission's regulation, "Public Records," implementing the Freedom of Information Act. E.O. 12044 provides that regulations should be

written in "plain English" understandable to those who must comply with them, and that there be early public participation and comment in the rule making process. This notice was prepared by the NRC staff on an experimental basis and is published for illustrative purposes to seek public comments on the value and usefulness of the revision.

DATE: Comments are due on June 18, 1979.

ADDRESSES: Interested persons are invited to submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined and reproduced in the NRC's Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, (301) 492–7211.

SUPPLEMENTARY INFORMATION: In keeping with the policy of E.O. 12044, "Improving Government Regulations," the NRC is issuing for public comment an advance notice of proposed rule making which would revise the Commission's regulation, "Public Records," implementing the Freedom of Information Act. E.O. 12044 provides that regulations should be written in "plain English" understandable to those who must comply with them, and that there be early public participation and comment in the rule making process. This notice was prepared by the NRC staff on an experimental basis and is published for illustrative purposes to seek public comments on the value and usefulness of the revision. The rule set forth below is not a complete revision of the NRC's regulations implementing the Freedom of Information Act. In particular, it does not include the amendments to 10 CFR Part 9 recently approved by the Commission, which establish policies and procedures for the waiver or reduction of fees under the Freedom of Information Act. The waiver-of-fee amendments have been approved by the General Accounting Office in accordance with the Federal Reports Act, and were published in the Federal Register as an effective rule on March 16, 1979.

Based upon the comments received as a result of this advance notice of rule making, the NRC will decide if further revision of Part 9 is warranted. It is the NRC's intent that all new amendments to NRC regulations be written in as simple and as clear a manner as possible in order that the regulations will be readily understood by those persons who are subject to the regulations and by members of the public who may not have specialized technical or legal training. Although portions of the NRC's current regulations in Title 10, Code of Federal Regulations, may also be selected for revision in the future, it is not the NRC's intent at this time to undertake an overall "plain English" revision of its regulations.

Request for Comments:

The NRC is interested particularly in the public's view on the following questions:

1. Is the revised rule set forth below written in a manner which can be readily understood by the general public?

2. Is the organization and format of the revised rule such that the public can readily determine how to make a Freedom of Information Act request to the NRC, and know what are the NRC's procedures for responding to the request?

3. Are there specific changes in style, organization, format, or substance which would make the revised rule easier to understand?

4. Does that revised rule represent a significant enough increase in charity, when compared to the present rule, to warrant further expenditure of public funds for rule making?

5. Are there other sections or Parts of NRC's regulations which appear particularly difficult to understand or ambiguous? If so, please identify the specific sections, or Parts, and indicate how they could be clarified.

PART 9—PUBLIC RECORDS

Subpart A—Scope; Definitions; NRC Public Document Rooms

9.1 What does Part 9 cover?
9.2 What definitions are used in this part?
9.3 What records are available in NRC Public Document Rooms?

Subpart B—Freedom Of Information Act Regulations

9.4 What is in this subpart?
9.5 What NRC records are available to the public under the Freedom of Information Act?
9.6 How can NRC records be requested under the Freedom of Information Act?
9.7 Is there a charge for records requested under the Freedom of Information Act?
9.8 When will NRC respond to a Freedom of Information Act request?
9.9 How will NRC respond to a Freedom of Information Act request?
9.10 What can a requester do if NRC denies a request for records, refuses to waive or reduce fees, or does not respond to the request?
9.11 When will NRC respond to an appeal?
9.12 How will NRC repsond to an appeal?
9.13 How will NRC respond to Freedom of Information Act requests directed to boards, panels, offices, or committees reporting to the Commission?
9.14 How does NRC inform Congress of its actions under the Freedom of Information Act?

Subpart A—Scope; Definitions; NRC Public Document Rooms

§ 9. What does Part 9 cover?

The regulations in this part are divided into four subparts. Subpart A sets forth definitions of some of the terms used in Part 9 and tells what information is routinely available to the public at NRC Public Document Rooms. Subpart B sets forth the rules for making a formal request for records under the Freedom of Information Act (5 U.S.C. 552). Subpart C sets forth rules for making requests under the Privacy Act of 1974 (5 U.S.C. 552a). Subpart D sets forth rules pertaining to the Government in the Sunshine Act (5 U.S.C. 552b).[1]

§ 9.2 What definitions are used in this part?

As used in this part:

(a) "NRC" means the Nuclear Regulatory Commission, established by the Energy Reorganization Act of 1974.

(b) "NRC personnel" means employees, consultants, and members of advisory boards, committees and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

(c) "Commission" means the collegial body of five NRC Commissioners, or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974.

(d) "Office" means, unless otherwise specified, all organizational units reporting to or through the Executive Director for Operations.

(e) "Government agency" means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

[1] Subparts C and D are not included in this rewrite of 10 CFR Part 9.

(f) "Record" means any paper, correspondence, report, computer tape, film, map, photograph, or other documentary material which the NRC, in connection with its official functions, has prepared, has in its possession, or has under its control. It does not include publicly available books, periodicals, or other publications owned or copyrighted by profit-making or non-profit organizations. "Records" do not include objects or articles which cannot be reproduced.

(g)"Working days" means Monday through Friday, except legal holidays.

§ 9.3 What records are available in NRC Public Document Rooms?

(a) The NRC maintains a Public Document Room (PDR) located at 1717 H Street, NW., Washington, D.C. The PDR is open 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. The records listed below are available at the PDR for inspection and copying. The NRC has a contract with a private firm which is located at the PDR to reporduce copies of records. The cost of reproducing records is set out in Appendix A. The records available at the PDR include—

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretations which have been adopted by the NRC and have not been published in the **Federal Register;**

(3) The NRC Manual, and instructions to staff that affect members of the public;

(4) NRC rules and regulations (Chapter 1, Title 10, Code of Federal Regulations);

(5) Correspondence to and from the NRC regarding applications, licenses, permits, orders, and rulemaking proceedings;

(6) Transcripts of NRC adjudicatory proceedings;

(7) Reports of NRC studies and research activities (NUREG reports);

(8) Reports of NRC contractors;

(9) NRC Regulatory Guides;

(10) NRC news releases;

(11) Records made available in response to FOIA requests;

(12) NRC's Annual report to Congress on the Administration of the FOIA.

(b) In addition to the Public Document Room in Washington, D.C., the NRC maintains over 130 Local Public Document Rooms throughout the country. An NRC Local Public Document Room is located near the site of each proposed or operating nuclear power plant, and near other facilities such as fuel fabrication plants and waste repositories, which are regulated by the NRC. These document collections are usually housed in a public library or other public building, and contain the same documents pertaining to the facility that are available in the PDR in Washington, D.C. A listing of the Local Public Document Rooms and their hours of operation may be obtained by calling or writing the Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telepone 301–492–7536).

Subpart B—Freedom of Information Act Regulations

§ 9.4 What is in this subpart?

This subpart tells how to get NRC records by making a request under the Freedom of Information Act (5 U.S.C. 552).

§ 9.5 What NRC records are available to the public under the Freedom of Information Act?

(a) The NRC will seek to make available any identifiable record. Although certain types of records are exempt from disclosure under the Freedom of Information Act, the NRC will still make a record available upon request unless disclosure of the record is demonstrably harmful or contrary to the public interest. Under the provisions of the act, the NRC may withhold from public disclosure the following types of records:

(1) Records that are to be kept secret in the interest of national defense or foreign policy. These records must meet specific criteria established by Executive Order 12065, and must be properly classified under that Executive Order.

(2) Records (with the exception of those concerning work hours, leave, and working conditions) that are related solely to the internal personnel rules and practices of the NRC. These include records that, if disclosed, would provide information which—

(i) Could result in circumvention of agency regulations, or

(ii) Could permit law violators to avoid detection.

(3) Records that are specifically exempt from disclosure by a statute other than the FOIA. To provide authorization under this provision, the other statute must establish specific criteria for withholding, refer to particular types of matters to be withheld, or leave no discretion about material to be withheld.

(4) Trade secrets and commercial or financial information that are obtained from a person or organization and are privileged or confidential. Included under this exemption are:

(i) An unpatented, secret, commercially valuable plan, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles that are trade commodities.

(ii) Commercial or financial information which, if disclosed, is likely to impair the Government's ability to obtain necessary information in the future, or to cause substantial harm to the competitive position of the person or organization from whom the information was obtained.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to any party other than a party in litigation with the NRC. This exemption applies only to written documents which have been transmitted between NRC personnel or between the NRC and another Federal agency, and which are also of a type normally privileged from disclosure in civil litigation. Among the documents protected from public disclosure under this exemption are the following:

(i) Communications between NRC and its attorneys, in an attorney-client relationship;

(ii) The work product of NRC attorneys; and

(iii) Records which contain advice, recommendations, opinions, of the staff, or draft documents which are part of the deliberative, consultative, or decisionmaking processes of the NRC.

(6) Those portions of personnel, medical, and similar files, which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. This exemption is intended to protect the confidentiality of information or portions of records which contain intimate personal details identifiable to particular individuals. All other information is not exempt from disclosure even though it may be stored in the NRC's personnel files. However, unless prohibited by other provisions of this section, portions of the files exempt from disclosure to others may be disclosed to the named individual or to the individual's designated legal representative, or to others with the individual's written consent.

(7) Investigatory records compiled for law enforcement purposes, but only that information which, if disclosed, would—

(i) Interfer with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source; or disclose information which, during a criminal investigation by a law enforcement authority or a lawful national security intelligence investigation by a Federal agency, is obtained only from the confidential source;

(v) Disclose investigative techniques and procedures; or

(iv) Endanger the life or physical safety of law enforcement personnel.

(8) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a Government agency that is responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) If a requested record contains information exempt from disclosure under the FOIA, NRC will provide the requester with any reasonably segregable, nonexempt portions of that record.

(c) If a requested record was received from another Government agency or deals with subject matter for which a Government agency other than the NRC has exclusive or primary responsibilty, then that document will be promptly referred by NRC to that other agency for direct response to the requester or for guidance for an NRC direct response.

(d) The exemptions listed in paragraph (a) will not be used as authority to withhold information from Congress.

§ 9.6 How can NRC records be requested under the Freedom of Information Act?

(a) Requests for records under the FOIA must be made in writing. Address the request to the Director, Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Indicate both on the envelope and in the letter that it is a "Freedom of Information Act Request." Information concerning availability of NRC records under the FOIA may be obtained by writing or telephoning the FOIA/Privacy Branch, Division of Rules and Records.

(b) Any requests for records either at a Public Document Room or under the FOIA should describe them in enough detail that NRC will be able to know what is wanted. If possible, include identifying information such as title, docket or contract number, and date or time period of the desired records. If these are not known, describe as specifically and as narrowly as possible the particular issue or matter before the NRC, the category of records, or the subject matter. If a request under the FOIA is not clear enough so that a member of the staff familiar with the subject can readily locate what is being sought, NRC will, within 10 days after receipt of the request, ask the requester to submit additional information or to meet with the NRC staff to clarify the request.

§ 9.7 Is there a charge for records requested under the Freedom of Information Act?

The FOIA permits NRC to charge fees for searching for records, and for reproducing copies of them. Under certain conditions, the fees are waived. A requester is always notified before any fees are imposed, unless the request specifically includes a statement of willingness to accept whatever costs are involved. Details about fees, and information as to conditions under which fees will reduced or waived, are included in Appendix A.

§ 9.8 When will NRC respond to a Freedom of Information Act request?

(a) The FOIA requires NRC to respond within 10 working days of receipt of the request.

(b) The 10-day period begins when the request is actually received by the Division of Rules and Records. If NRC determines that there will be a charge for the records, the 10-day period will not begin until the requester pays, or agrees to pay, the estimated costs, or NRC agrees to waive the fees.

(c) The NRC may notify the requester in writing that it needs additional time (not more than 10 working days) to reply to the request for records because:

(1) The NRC needs to look for and collect the requested records from NRC offices that are physically located apart from the office handling the request;

(2) The request for records will require the NRC to look for, collect, and review a voluminous amount of separate records; or

(3) The NRC has to consult with another Federal agency before releasing the records sought; or two or more separate components of NRC need to consult.

(d) In exceptional circumstances where it does not appear possible to complete action on the request within the time set out in the FOIA, the NRC may ask the requester to agree to a further extension of time.

(e) If the NRC does not respond to a request within 10 working days, or within the extended period provided in the FOIA or agreed to with the requester, the requester may immediately appeal in accordance with the procedures described in § 9.10, or may file suit in a United States District Court.

§ 9.9 How will the NRC respond to a freedom of Information Act request?

(a) If a request does not adequately describe the records sought, the NRC will seek clarification (See § 9.6(b)).

(b) If a request adequately describes the records sought, the NRC will take one of the following actions:

(1) Send the records to the requester.

(2) Notify the requester when and where the records will be made available. Generally, this will be at the NRC's Public Document Room, located at 1717 H Street, NW., Washington, D.C.; or for docket-related material, at one of the NRC's Local Public Document Rooms (See § 9.3(b)).

(3) Notify the requester that there are fees for searching for or reproducing copies of records subject to the request. The requester will then have 10 working days to submit a deposit equal to the estimated costs, agree in writing to pay the costs, or submit a request for waiver or reduction of the fees. Until the requester takes one of the above actions, the NRC will suspend processing of the request (See § 9.8(b)).

(4) Notify the requester that a requested record was received from another Government agency or deals with subject matter for which a Government agency other than the NRC has exclusive or primary responsibility, and that the record will be promptly referred by the NRC to that agency for direct response to the requester or for guidance concerning the NRC's response.

(5) Notify the requester in writing that the records sought, or portions of them, will not be provided because they are exempt from disclosure under the FOIA (See § 9.5 for types of records that are exempt from disclosure). NRC's response will include—

(i) The reason for its denial;

(ii) The specific exemption under the FOIA and the Commission's regulations that authorizes the NRC to withhold the records;

(iii) The name and title or position of each person responsible for withholding the records;

(iv) A statement that an appeal may be submitted within 30 days to the Executive Director for Operations or, in some cases, to the Secretary of the Commission.

(6) Notify the requester that the record sought does not exist. The FOIA does not require the NRC to create a record in response to an FOIA request, nor to

promise future delivery of a record not yet in existence.

(c) If a request seeks a waiver or reduction of fees and the waiver or reduction is denied, the NRC's response will explain why. (See Appendix A).

§ 9.10 What can a requester do if the NRC denies a request for records, refuses to waive or reduce fees, or does not respond to the request?

(a) A requester may appeal a denial of a request for records or a denial for the waiver or reduction of fees. A requester may also appeal if the NRC does not respond within the time limits set out in § 9.8.

(b) Appeals shall be in writing, and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, unless NRC's letter of denial specifies that the appeal should be made to the Commission. In that case, the appeal is addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Both the appeal letter and the envelope should be marked "Appeal from Initial FOIA Decision."

(c) It is suggested that the letter of appeal set forth reasons why the initial denial should be reversed, including, where possible, a discussion of any relevant court decisions.

§ 9.11 When will the NRC respond to an appeal?

When an appeal letter is received by the Executive Director for Operations or the Secretary of the Commission, the NRC will have a 20-working-day period in which to respond. The NRC may, in writing, extend the period for response by no more than 10 additional working days. This extension is limited to the unused portion of the 10-day extension authorized by § 9.8(d).

§ 9.12 How will the NRC respond to an appeal?

(a) If the appeal is for access to records, the Commission or the Executive Director for Operations may—

(1) Grant the appeal by furnishing the records to the requester, or making them available at the Public Document Room or a Local Public Document Room; or

(2) Deny the appeal in whole or in part, notifying the requester as to which exemption in the FOIA gives the NRC the authority for the denial, how the exemption applies, and the reasons for the denial. If the appeal is only partially denied, the remaining requested records will be made available. When an appeal is denied, the NRC shall inform the requester that the denial is a final agency action, and that the requester may obtain judicial review of that action in a United States District Court.

(b) If the appeal is for waiver or reduction of fees, the Commission or the Executive Director for Operations may take either of the following actions:

(1) Reverse the denial, thereby granting the request for waiver or reduction of fees. In that case, the NRC will immediately begin its search for the requested records, and the provisions of § 9.7 will apply.

(2) Uphold the denial, notifying the requester as to why the request does not meet the requirements of Appendix A.

§ 9.13 How will the NRC respond to Freedom of Information Act requests directed to boards, panels, offices, or committees, reporting to the Commission?

(a) For boards, panels, and offices reporting directly to the Commission, and the Office of the Executive Legal Director, the initial determination on a request for records or a request for waiver or reduction of fees will be made by the head of such board, panel, or office; and an appeal of an adverse determination shall be made to the Commission.

(b) For the Advisory Committee on Reactor Safeguards and advisory committees established pursuant to Part 7 of this chapter, the Advisory Committee Management Officer will make the initial determination on a request for records or a request for waiver or reduction of fees, and an appeal of an adverse determination shall be made to the Commission.

§ 9.14 How does the NRC inform Congress of its actions under the Freedom of Information Act?

(a) On or before March 1 of each calendar year, the Director, Office of Administration, submits to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committee of the Congress a report covering the preceding calendar year. A copy of each report is placed in the NRC Public Document Room.

Appendix A—Fees Charged for NRC Records

(a) *Fees.*

(1) The FOIA permits NRC to charge fees for searching for records, and for reproducing copies of them. Under certain conditions, the fees are waived (See (b)). A requester is always notified before any fees are imposed, unless the request specifically includes a statement of willingness to accept whatever costs are involved. NRC may require that the fee be paid in full before any records are given to the requester.

(2) Search charges are $5.00 per hour for searches made by clerical or administrative employees, and $12.00 per hour for searches made by professional or supervisory employees. Charges are imposed even when no records responsive to the request are found, or when all records found are exempt from disclosure. NRC does not charge a fee for—

(i) The first 4 hours of search time involved in a request or series of related requests;

(ii) Searches for records in the NRC Public Document Room or in any of NRC's Local Public Document Rooms; or

(iii) Searches for records requested by another Federal agency, State or local government, intergovernmental or international agency, or foreign government, under circumstances when furnishing records without charge is an appropriate courtesy.

(3) Charges to reproduce NRC records are as follows:

(i) For documents reproduced by NRC staff:

Sizes up to 8½"×14"—$0.10 per page;

Other sizes—Charges are based on NRC's direct costs (including computer reprograming, if necessary to obtain the requested records).

(ii) For documents located in the NRC Public Document Room, requesters may arrange for copies to be made by NRC's reproduction contractor there, with the following charges:

Sizes up to 8½"×14", $0.08 per page.

Larger sizes up to 30"×40", $0.10 per page.

Microfiche, $0.25 per copy.

Microfiche blowback, $0.08 per page.

Coin-operated machines, $0.10 per page.

The minimum charge for mail requests is $2.00 plus shipping and mailing costs.

(iii) For documents requested at NRC's Local Public Document Rooms, charges are at the going rate charged other customers in that facility.

(iv) For transcripts of testimony in NRC proceedings that have been transcribed by a reporting firm under contract to NRC, charges are the same as for other records, if NRC makes the copies. The requester may purchase the transcripts directly from the reporting firm at the cost provided in its contract with NRC.

(4) Shipping or mailing costs are added to mail requests.

(5) When the actual cost differs from the cost previously estimated by NRC, NRC will refund an overpayment, or bill the requester for an underpayment.

* * * * *

(b) Waiver or reduction of fees.

(To be completed later as stated in the statement of considerations.)

Written comments and suggestions on the revised Freedom of Information Act regulations of 10 CFR Part 9 should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined and reproduced in the NRC's Public Document Room at 1717 H Street, N.W., Washington, DC.

Dated at Bethesda, Maryland this 9th day of April 1979.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

[FR Doc. 79-11764 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 2]

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to delete Section 2.14 of its General Rules which provides for the voluntary annual reporting of electric utility conservation activities. In view of the expanded scope of Federal and State programs to promote energy conservation, and specific directives to electric utilities relating to their participation in insulation and solar energy programs, the continued reporting of this generalized information may not now represent a cost-effective effort in the public interest.

DATE: Comments will be received in the Office of the Secretary through the close of business, Thursday, May 17, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Reference Docket No. RM79-25)

FOR FURTHER INFORMATION CONTACT:

Bernard B. Chew, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-4770; or

Charles F. Reusch, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-4216.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (the Commission)[1] hereby gives notice that it proposes to amend its General Rules by deleting § 2.14 which was originally established by Order No. 495 issued November 13, 1973, 50 FPC 1574, 38 FR 31963 in Docket No. R-454. Citing authority granted by Section 202(a) of the Federal Power Act, as amended, 49 Stat. 848, 16 U.S.C. 824a(a), the Commission at that time instituted a voluntary annual reporting procedure, covering conservation activities of electric utilities, to facilitate governmental and public awareness of such activities and to promote the conservation and effective use of natural resources used in electric power production. Utilities were then considered to be in a unique position to initiate effective programs for their respective customers on the prudent utilization of electric energy. Therefore, each utility was requested to provide annually on May 1, the following information: (1) Its overall policies for the conservation and efficient utilization of natural resources, (2) its program of research and development in conservation, and (3) its general plan on how to achieve continually increasing efficiencies in the generation, transmission, distribution and utilization of electric energy.

In view of the expanded scope of Federal and State programs to promote energy conservation, and specific directives to electric utilities relating to their participation in insulation and solar energy programs, the continued reporting of this generalized information may not now represent a cost-effective effort in the public interest. Also, the promotion of energy conservation and efficient use of energy resources is a primary function of the Secretary of Energy, rather than of this Commission. (National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206.) Authorities and responsibilities under Section 202(a) of the Federal Power Act were transferred to the Secretary by the Department of Energy (DOE) Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267. See also 10 CFR Part 1000. By letter dated August 17, 1978, FERC staff requested advice as to whether the staff of the Economic Regulatory Administration (ERA) was interested in continued reporting under 18 CFR 2.14. ERA staff now advises that the reporting is of limited value to it, in view of its broad authority to gather all forms of energy information on a mandatory basis, when needed. Consequently, it interposes no objection to discontinuance of the reporting.

The Commission solicits comments on the proposed discontinuance of this reporting, especially as to whether continued reporting of this information is in the public interest and justifies the reporting burden. Comments are also solicited on the merits of a revised reporting system located elsewhere within the Department of Energy.

Any interested person may submit to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, no later than May 17, 1979, data, views, comments or suggestions in writing concerning all or part of the amendment proposed herein. Written submittals 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, N.E., Washington, D.C. 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal should be addressed.

[Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; Federal Power Act, as amended, 16 U.S.C. 791 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.]

In consideration of the foregoing, the Commission proposes to amend Part 2, Subchapter A, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

§ 2.14 [Deleted]

1. Part 2, Subchapter A, Chapter I, Title 18, Code of Federal Regulations, is amended by deleting § 2.14

[Docket No. RM79-25]

[FR Doc. 79-11959 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] The term "Commission" when used in the context of action taken prior to October 1, 1977, refers to the FPC, when used otherwise, the reference is to the FERC.

ENVIRONMENTAL PROTECTION AGENCY

[21 CFR Part 193]

Proposed Food Additive Tolerances for Insecticide Propargite

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the insecticide propargite at 10 parts per million (ppm). The proposal was submitted by Uniroyal Chemical. This amendment would establish a maximum permissible level for residues of the subject pesticide in or on tea.

DATE: Comments must be received on or before May 17, 1979.

ADDRESS COMMENTS TO: Mr. Franklin D. R. Gee, Product Manager (PM 17), Office of Pesticide Programs, Registration Division (TS–767), EPA, East Tower, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. R. Gee, PM 17, at the above address (202/426–9425).

SUPPLEMENTARY INFORMATION: On August 22, 1975, the EPA published in the **Federal Register** (40 FR 36798) a notice that Uniroyal Chemical, Div. of Uniroyal, Inc., Amity Rd., Bethany, CT 06525, had submitted a petition (FAP 6H5100). This petition proposed that 21 CFR 193.370 be amended by the establishment of a regulation permitting residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on tea (dried or manufactured) resulting from application of the insecticide to growing tea with a tolerance limitation of 5 ppm.

Subsequently, the petitioner amended the petition by increasing the proposed tolerance from 5 ppm to 10 ppm. Because of the potential increase in exposure of humans to propargite residues as a result of the higher tolerance, the tolerance is being proposed at this time to provide an opportunity for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a rat acute oral lethal dose (LD_{50}) study of 2.2 grams (g)/kilogram (kg) of body weight (bw), a 90-day rat feeding study with a no-observable-effect level (NOEL) of 40 milligrams (mg)/kg bw/day, a 90-day dog feeding study with an NOEL of 2,000 ppm, a two-year rat feeding study with an NOEL of 900 ppm (oncogenic potential is negative), a two-year dog feeding study with an NOEL of 900 ppm, a three-generation rat reproduction study with an NOEL of 300 ppm, and a rat teratology study showing no teratogenic effect up to 100 mg/kg bw. Based on the two-year dog feeding study (NOEL of 900 ppm) and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.225 mg/kg bw/day. Tolerances have previously been established for residues of propargite (40 CFR 180.259) on a variety of raw agricultural commodities at levels ranging from 55 ppm to 0.1 ppm. Food additive tolerances have previously been established for residues of propargite (21 CFR 193.370) in dried hops at 30 ppm, raisins at 25 ppm, and dried figs at 9 ppm. Feed additive tolerances have also been previously established (21 CFR 561.330) for residues of propargite in dried apple pomace at 80 ppm and dried citrus pulp and dried grape pomace at 40 ppm. The theoretical maximal residue contribution (TMRC) from these previously established tolerances and the proposed tolerances does not exceed the ADI.

Desirable data lacking from the petition are an oncogenicity study on a second mammalian species and mutagenicity studies. The Agency will request the mutagenicity studies when the protocols for the tests are finalized. Although the second oncogenicity study is presently underway, based on available data, the risks are deemed acceptable since the absence of an oncogenic potential is adequately shown in the two-year rat feeding study.

An adequate analytical method (gas-liquid chromatography using a flame photometric detector specific for sulfur) is available for enforcement purposes. No action is currently pending against continued registration of propargite nor are any other considerations involved in establishing the proposed tolerance. Thus, it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). There is no reasonable expectation of residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which a tolerance is sought. It is proposed, therefore, that the tolerance of 10 ppm in or on tea be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before May 17, 1979, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "FAP 6H5100/P13". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of PM 17, Room 229, East Tower, from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 348])

Dated: April 11, 1979.

Douglas D. Campt,
Acting Director, Registration Division.

It is proposed that Part 193, Subpart A, § 193.370 be revised by editorially reformatting the section into an alphabetized columnar listing and alphabetically inserting tea at 10 ppm as follows:

§ 193.370 Propargite.

Tolerances are established for residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on the following processed foods when present therein as a result of the application of this insecticide to growing crops:

Food:	*Parts per million*
Figs, dried	9
Hops, dried	30
Raisins	25
Tea, dried	10

[FAP 6H5100/P13: FRL 1205–4]

[FR Doc. 79–11956 Filed 4–16–79; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 310]

Requirement for Estrogens Labeling Directed to the Patient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation requiring patient labeling for estrogenic drug products (1) to state that the regulation does not

apply when the drug is dispensed or administered to male patients and (2) to allow the distribution of the labeling after administration of the drug when, at the time of administration, the patient is unable to read and understand the labeling because of impaired consciousness. This action is taken in response to a number of inquiries and comments that the agency has received from physicians and pharmacists since the final rule requiring patient labeling for estrogenic drug products became effective.

DATE: Comments by June 18, 1979; proposed effective date of the final rule based on this proposal is 30 days after the date of publication of the final rule in the Federal Register.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven Unger, Bureau of Drugs (HFD–30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5220.

SUPPLEMENTARY INFORMATION: The final rule requiring patient labeling for estrogenic drug products was published in the Federal Register of July 22, 1977 (42 FR 37636). The rule specified the kind of information to be contained in the patient labeling and described the means by which it was to be made available to the patient. In the same issue of the Federal Register, the agency issued a guideline text deemed to meet the requirements of the rule. In general, the regulation requires persons who dispense or administer any prescription estrogen drug product to give patient labeling to the patient along with the drug product. Although certain estrogens are specifically exempted from coverage (e.g., estrogens in the drug products intended for contraception), the rule applies to all other prescription estrogen drug products without regard to the indication for which the drug is being used, to the sex of the patient, or to any of the other circumstances under which the drug is being used.

Shortly after the regulation became effective on October 18, 1977, the agency began receiving comments concerning the scope of the regulation and the manner by which it was to be implemented. The comments pointed out the variety of circumstances in which estrogens are dispensed and administered, and suggested that the regulation was not sufficiently flexible to reasonably accommodate all the uses of the drug. Based on a review of these comments, the Commissioner of Food and Drugs has tentatively concluded that the estrogen patient labeling regulation should be amended to deal with at least two of the issues that have been raised. These are (1) whether the patient labeling need be distributed to male patients and (2) whether to permit the distribution of labeling after administration of the drug when, at the time of administration, the patient is unable to read and understand the labeling. Several other issues identified by the comments more generally concern all present patient labeling requirements; these issues were addressed in a proposal published in the Federal Register of October 13, 1978 (43 FR 47198). Still other issues are currently being considered in the context of the development of an overall patient labeling program. The two issues that are the subject of this proposal will be discussed in turn.

Distribution of Patient Labeling to Male Patients

Certain estrogen drug products are approved for the palliative treatment of prostatic cancer. Certain of these drug products are also approved for the palliative treatment of breast cancer in appropriately selected men as well as women. The estrogen patient labeling regulation presently requires the distribution of labeling to both men and women whenever they receive an estrogen drug product.

Comments have suggested that estrogen patient labeling is inappropriate for the male patient because most of the provisions, intent, and thrust of the regulation and guideline text are directed at the female patient. Moreover, several comments have suggested that the labeling may provide information to the male patient that a physician might reasonably and ethically conclude should be withheld from the patient. These comments suggest that because only one of the approved uses of estrogen applies to the male, the required listing of all approved indications in the patient labeling may inadvertently alert the patient to his condition, a result which may be contrary to the medical needs of the patient. Copies of these comments have been placed on file in the Hearing Clerk's office, FDA.

The Commissioner agrees that the present estrogen regulation and guideline text are directed to women and intended to advise them of the drug's benefits and risks and as a result they are less appropriate for male patients. Although some of the substantive content of the labeling and guideline text is applicable to male patients, in emphasis and tone the regulation and the guideline labeling primarily address the concerns of female patients.

The proposal would exclude from the operation of the regulation all estrongen prescription drug products whose labeling limits the drug to treatment of male patients. In the case of these drug products, the proposal would relieve manufacturers and other labelers from the obligation to provide patient labeling with shipments of these products. The agency has already informally advised the manufacturer of one such drug product that the regulation does not apply to the drug because the drug is limited to use in males. The affected drug, Stilphostrol, is approved solely for the treatment of inoperable progressing prostatic cancer and is, thus, inappropriately subject to a regulation governing patient labeling for estrogens for general use. The manufacturer's request for clarification of the regultation's applicability and the agency's response have been placed on file in the FDA hearing Clerk's office.

With respect to all other estrogen prescription drug products, the proposed regulatory change would operate at the dispensing level rather than at the level at which the product is initially labeled. Therefore, manufacturers and labelers would continue to provide estrogen patient labeling with every shipment of the drug products. In this case, the regulation, if finalized, would relieve the dispenser or person administering the drug product of the obligation to provide the male patient with patient labeling. The agency would leave to individual physicians and pharmacists the responsibility to develop whatever procedures are necessary to enable the dispenser to determine whether the labeling must be dispensed.

The Commissioner considered several alternative courses of action before proposing these changes. One alternative involved revising and expanding the labeling to explicitly address the particular needs of male users of estrogens. The Commissioner rejected this course of action because it would significantly expand the required labeling beyond its limited purpose. The primary use of estrogens in men differs markedly from that to women. First, the drug's use in women far exceeds its use in men. Second, the use in women is largely for the treatment of the symptoms of the menopause, which is optional or elective therapy in the case of significant numbers of women. The initiative for the existing patient labeling arose from concern over exessive use of

estrogen for symptoms of the menopause and its relationship to endometrial cancer. None of these factors directly relate to the use of the drug in men and this, accordingly, results in a somewhat different regulatory assessment of the need for estrogen patient labeling for men. Thus, while the male patient's right to know in the abstract may be the same as that of a female, as a practical matter, the basis for the male's actual participation in the choice of therapy is less compelling. Moreover, the use of the drug to treat prostatic cancer (the primary use of the drug in males) is an example of a situation when the nature of the drug and the nature of the patient's illness are items of information physicians may justifiably wish to keep from some patients.

The Commissioner is not proposing the alternative of permitting physicians to withhold or direct the pharmacist to withhold the labeling from all patients. The Commissioner finds that option unsupportable with respect to the menopausal patient, which is the largest patient population for whom the drug is indicated, because of the optional nature of therapy and the risk the drug presents.

The regulatory change that is proposed would not prohibit the labeling from being given to male patients when so desired by the prescribing physician. The effect of the amendment would simply be that a decision not to provide the labeling to a male patient would not result in the drug being misbranded.

Several of the reasons which justify excluding drugs dispensed to male patients from the application of the rule arguably support a similar exclusion for drugs dispensed to women receiving estrogens for treatment of breast cancer, or at least support a provision permitting the physician to direct the pharmacist to withhold the labeling in individual cases. The FDA believes that a complete exclusion for women patients receiving estrogen for breast cancer is not warranted. The estrogen labeling is written specifically for a female audience and has, in terms of the information it imparts, the same applicability to women patients afflicted with breast cancer that if has to menopausal patients. Moreover, the exemption would be impractical to apply; the pharmacist would need to know the diagnosis for each woman patient, information not normally provided to pharmacists.

Whether to permit the physician a discretionary exemption to be used only in the case of women cancer patients is a more difficult regulatory problem to resolve. The FDA has tentatively decided, however, not to propose such an exemption. Permitting an exemption for some indications of a drug but not for others would make the regulatory scheme complicated and likely to be misunderstood by both pharmacists and physicians, virtually impossible to administer or enforce, and, at this relatively early period of the patient labeling program, unreasonably subject to abuse. Moreover, FDA has not been persuaded that this labeling has the potential to adversely affect women patients, including cancer patients. On balance, the FDA is more concerned that women patients with menopausal symptoms receive the labeling in all cases. To ensure that result, the regulation must require that labeling for estrogens be dispensed to women patients in all cases.

The FDA notes, in this regard, that most of the specific criticism of the estrogen patient labeling regulation reflected the application of the regulation to male patients, and not to female patients being treated for breast cancer.

The decision here is admittedly a policy one. An alternative solution would be to permit physician discretion in the dispensing of estrogen patient labeling. At this point in the estrogen labeling program, however, the FDA believes it preferable not to do this. The possibility that granting a "physician-directed exemption" for estrogen products generally will result in a withholding of the labeling from a number of menopausal patients who properly need such labeling to use the drug safely, and who comprise the overwhelming number of patients who use estrogens, outweights the possible harm that may follow from providing the labeling to the relatively few women patients who are treated with estrogens for breast cancer.

The agency is currently considering the problems posed by this issue in the development of an umbrella patient labeling proposal. At this preliminary stage in the development of the program, the Commissioner believes the best course is to confine the applicability of the patient labeling regulation to the prescribing of estrogens to female patients. While not a perfect solution, it appears to reconcile competing views more equitably than other possible alternatives.

Distribution of Patient Labeling After Administration of the Drug

In the hospital setting, the regulation now requires that the labeling be provided to the patient before first adminstration of the drug product. Several letters noted that estrogens are occasionally adminstered to patients either in surgery or preoperatively or postoperativly. These patients are unable to read and understand the labeling at the time the drug is adminstered because they are sedated or under the effects of an anesthetic. The letters questioned the usefulness of providing such patients with labeling and recommended that the regulation be revised either to allow the withholding of labeling when the drug is adminstered to a patient who is less than fully conscious or to permit the distribution of the labeling after administration of the drug product. Copies of these letters have also been placed on file in the FDA Hearing Clerk's office.

The proposal would permit dispensers to distribute labeling after administration of an estrogen drug product, when, at the time of adminstration, the patient is unable to read and understand the labeling because of impaired consciousness. The Commissioner believes that only rarely does the need arise to administer an estrogen drug product to a less than fully conscious patient. In most instances in which the need may arise, the use of the drug product can be anticipated and labeling distributed well before the drug product is adminstered. In the rare case where the use can not be anticipated, this proposal would permit the dispenser to distribute the patient labeling after administration of the drug product. While the Commissioner concedes that patient labeling received after first administration of the drug is of less value to the patient, he believes that the labeling would still represent a significant informational resource, helping the patient to make a decision about continuing estrogen thereapy and assisting the patient in monitoring possible adverse reactions.

The Commissioner notes the permissive nature of the proposed amendment. He wished to emphasize his belief that patient labeling is of greatest utility to the patient if given prior to adminstration of the drug product. The Commissioner urges dispensers to make every practicable effort to ensure that the labeling is given out prior to administration.

This document also proposes to amend § 310.515(e)(1) (21 CFR 310.515(e)(1)) to state that this regulation does not apply to estrogen-containing intrauterine contraceptive devices which should be labeled according to the requirements of § 310.502 (21 CFR 310.502).

The Commissioner proposes to make these amendments effective on May 17, 1979.

The Commissioner has determined that this document does not contain an agency action covered by § 25.1(b) and therefore, consideration by the agency of the need for preparing an environmental impact statement is not required.

Accordingly, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502(a), 505, 701(a), 52 Stat. 1040–1042 as amended, 1050, 1052–1053 as amended, 1055 (21 U.S.C. 321, 352(a), 355, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Part 310 in § 310.515 by revising paragraphs (d)(1) and (e) to read as follows:

§ 310.515 Estrogens; labeling directed to the patient.

* * * * *

(d)(1) Except as provided in this paragraph, patient labeling for each estrogen drug product shall be provided in or with each package of the drug product intended to be dispensed or administered to the patient.

(i) Patient labeling for drug products dispensed in acute care hospitals or long-term-care facilities will be considered to have been provided in accordance with this section if provided to the patient before the first dose of estrogen is administered and every 30 days thereafter, as long as the therapy continues.

(ii) Patient labeling for estrogen drug products administered to a patient who, at the time of administration, is unable to read and understand the labeling (e.g., because the patient is unconscious, sedated, or under the effects of an anesthetic) will be considered to have been provided in accordance with this section if provided to the patient after administration of the drug.

* * * * *

(e) This section does not apply to the following:

(1) Estrogen-progestagen oral contraceptives and oral diethystilbestrol (DES) products intended for postcoital contraception, which shall be labeled according to the requirements of § 310.501, and intrauterine contraceptive devices which shall be labeled according to the requirements of § 310.502.

(2) Estrogen drug products whose labeling limits the drug to treatment of male patients.

(3) Any other prescription estrogen drug product when prescribed for or administered to a male patient.

* * * * *

Interested persons may, on or before June 18, 1979 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: April 6, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drug.

[Docket No. 78–0303]

[FR Doc. 79–11678 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 1000]

Diagnostic X-Ray Systems; Proposed Amendment of Assembly and Reassembly Provisions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revoke the regulation prohibiting the assembly of uncertified components into any diagnostic x-ray system or the reassembly of uncertified components associated with a change of ownership and location that is to become effective on August 1, 1979. A study recently performed by the agency indicates that, although this regulation will affect only a small fraction of the uncertified systems now in use, it may nevertheless have a significant adverse impact on the systems affected in terms of increased cost of x-ray equipment and interruption of health care delivery. The study also indicated that, for the systems affected, the regulation is not likely to be cost effective. Other contemplated or existing programs are more effective and will address the improvement of radiation safety performance of all diagnostic x-ray systems. The agency, therefore, proposes to revoke this regulation and extend the provisions permitting installation of uncertified components into existing systems whose components are all uncertified and the provisions permitting continued reassembly of uncertified equipment indefinitely. The regulation that was designed to aid the transition from the sale of uncertified to certified equipment when the diagnostic x-ray standard became effective on August 1, 1974, is no longer necessary and is also being revoked.

DATES: Comments by May 17, 1979; the proposed effective date of a final rule based on this proposal is the date of publication of the final rule in the **Federal Register.**

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX–460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION:

Historical Overview

The Federal performance standard for diagnostic x-ray systems and their major components [§§ 1020.30, 1020.31, and 1020.32 (21 CFR 1020.30, 1020.31, and 1020.32)] was published in the **Federal Register** of August 15, 1972 (37 FR 16461). This standard contains performance requirements for specified x-ray system components and for diagnostic x-ray systems made up of these components. The standard also contains administrative controls that further ensure the radiation safety of diagnostic x-ray systems. Among these is the requirement that manufacturers certify that all specified components manufactured after August 1, 1974, comply with the standard.

After publication of the August 15, 1972 final rule, manufacturers posed a number of questions on how the standard would apply to the sale and installation of both new and used x-ray components. Questions such as the following were not addressed by the performance standard:

(1) How would the standard apply to components physically produced before the effective date of the standard but assembled into a system after the effective date of the standard?

(2) How should the assembly of uncertified components into a system containing certified components be controlled?

(3) How should the reassembly, rebuilding, or refurbishing of used x-ray components or systems be controlled?

(4) How should the standard be applied to preserve the radiation safety performance provided by certified components and systems?

(5) How should the standard be applied to encourage the improvement of existing x-ray systems through the addition of certified components?

Because guidance was necessary for manufacturers and users in these situations, two notices of proposed rulemaking addressing these situations were published in the **Federal Register** of February 28, 1973 (38 FR 5349). After incorporating changes indicated by comments on the proposals, § 1000.16 (21 CFR 1000.16) was published as a final rule combining these two proposals in the **Federal Register** of July 29, 1974 (39 FR 27432) and became effective August 1, 1974.

This rule characterized the agency's regulatory policy concerning assembly and reassembly of diagnostic x-ray systems. In the context of this policy, "assembly" refers to the installation of new components for the first time to form a complete x-ray system, and also to the installation of one or more components into an existing system. "Reassembly" refers to the installation of used components from one or more previously existing systems to form a diagnostic x-ray system.

Section 1000.16 provided for a 5-year transition period after the effective date of the standard, during which reassembly of any x-ray system was permitted, and the assembly of uncertified components was permitted as long as no certified component was involved in the system. However, the policy also provided that, after August 1, 1979, no uncertified components could be assembled into a system or reassembled when the reassembly was associated with a change of ownership and location.

The 5-year transition period permitted by § 1000.16 was intended to:

(1) Prevent the downgrading of the radiation safety performance of certified components and systems containing certified components, by requiring that new, complete systems be composed of either all uncertified or all certified components, and by prohibiting replacement of a certified component in an x-ray system by an uncertified component (§ 1000.16(a)(1)).

(2) Promote the upgrading of systems containing uncertified components, by requiring that once a certified component has been installed into a system, all future components installed into the system must be certified (§ 1000.16(a)(2) and (3)).

(3) Allow the reassembly of systems that have been upgraded with one or more certified components (§ 1000.16(a)(4)).

(4) Allow the assembly of new systems containing both uncertified and certified components after the effective date of the standard, provided that all the components had been purchased before the effective date of the standard (§ 1000.16(b)).

After August 1, 1979, § 1000.16 was intended to:

(1) Extend and tighten the provisions of § 1000.16(a) by requiring that all new systems contain only certified components and force the upgrading of uncertified systems when components of these systems are replaced due to wear and tear by requiring that all components added to any system be certified (§ 1000.16(c)).

(2) Prevent the reassembly of uncertified components by allowing only certified components to be reassembled, when a system is sold and relocated (§ 1000.16(d)).

Thus, no uncertified components or systems may be marketed and installed after August 1, 1979, under the current provisions of § 1000.16(c) and (d).

Reevalustion of Assembly and Reassembly Provisions

As part of a program of reevaluating the benefits and economic impact of regulations on diagnostic x-ray systems, FDA has completed a new cost-benefit analysis of the diagnostic x-ray performance standard (§§ 1020.30, 1020.31, and 1020.32) and the policy on assembly and reassembly of components (§ 1000.16). This reevaluation was made, first, to account for the experience gained through the administration of the regulations, and, second, to include data not available when the costs and benefits of the regulations were originally assessed. A draft of this document, "A Second Look at the Costs and Benefits associated with the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly" (Ref. 1), is on file with the Hearing Clerk, Food And Drug Administration (address above), and is available to interested parties upon request. The analysis has resulted in the following conclusions concerning the policies on assembly and reassembly of components and systems:

(1) The provisions of § 1000.16 that are effective after August 1, 1979, will affect only a small fraction of the uncertified x-ray systems currently in use.

(2) The total impact of this regulation, in terms of increased cost for the x-ray equipment or interruption of health care delivery, may be significant.

(3) For those uncertified systems that would be affected, by virtue of their sale and relocation, § 1000.16 is not likely to be a cost-effective approach to improve the radiation safety performance of x-ray systems.

FDA, therefore, believes that the Federal policy concerning used x-ray equipment as it is currently scheduled to be after August 1, 1979, is not appropriate. Controls are needed, however, after August 1, 1979, to preserve the radiation safety provided by certified systems and to promote the continued upgrading of uncertified x-ray systems when it may be done in a constructive, cost-effective manner. Therefore, the agency has examined modifications to § 1000.16 that would establish the desired controls at reasonable cost. A discussion of the proposed modifications follows.

Reassembly of Uncertified X-Ray Equipment

Section 1000.16(d) as currently constituted will prohibit the reassembly of uncertified x-ray conponents and systems after August 1, 1979, if the reassembly is associated with a change in ownership and location of the components or system. FDA proposes to revoke this section to permit the continued reassembly of uncertified x-ray equipment.

Because both a change in ownership and a relocation of the system are required, the effect of § 1000.16(d) is limited to a small percentage of the total number of x-ray systems. The agency's cost-benefit analysis estimates that, at the end of 1979, there would be about 100,000 uncertified sytems in use. The analysis also estimates that 1,100 to 2,600 uncertified systems would be resold and relocated and thus would come under the provisions of § 1000.16(d) in the year following August 1, 1979. This represents and annual rate of 1 to 2 percent of the uncertified systems expected to be in use during that year. Furthermore, approximately 95 percent of these x-ray systems are less than 14 years old. Thus, in the first year after the effective date of § 1000.16(d), the large majority of systems entering the used equipment market will have been manufactured after 1965. These systems contain many of the features required by the Federal performance standard because they generally comply with the standards set out in Report No. 33 of the National Council on Radiation Protection and

Measurements (Ref. 2). For example, almost all stationary, general-purpose radiographic sytems in this group already have beam-limiting devices that permit adjustment of the size of the x-ray field. The older systems that have fixed collimation or no collimation at all, and, therefore, have poor radiation safety performance, will generally not be affected by § 1000.16(d) because they are unlikely to be resold in this country. They are generally among the 6,500 systems that the analysis estimates are removed from service each year because they wear out.

A major factor the agency considered in developing § 1000.16 was the anticipated availability of used certified equipment by August 1, 1979. However, little, if any, certified equipment is now expected to reach the used equipment market by that date. Therefore, users who contemplate or require replacement of a system and who are normally purchasers of used x-ray systems would have to purchase new certified systems at a much higher cost than a used system; forgo the replacement of the system entirely, thereby retaining antiquated equipment in operation; or be forced to curtail or close down x-ray services.

Which of these courses of action would be chosen in individual situations in uncertain. However, to the extent that users retain antiquated equipment or curtail x-ray services, the ability to provide good radiological services would be adversely affected.

The economic impact of the additional cost of purchasing new equipment and the loss in resale value of used equipment under the current regulation has been estimated to be between 34 and 121 million dollars in 1980 and between 18 and 64 million dollars in 1985. Furthermore, the analysis reported a benefit/cost ratio for § 1000.16 after August 1, 1979, of 0.4 to 0.6 and a benefit/cost ratio for the diagnostic x-ray standard of 4.5. Thus, § 1000.16 as currently constituted is only $\frac{1}{10}$ as cost effective as the x-ray standard.

FDA notes that cost-benefit analyses of complex issues are usually not exact because all of the necessary data are generally not available. In addition, it is usually necessary to use average and approximate numbers to make the calculations tractable, particularly in this case, in which the benefit—radiation exposure reduction to the population—must be expressed as an economic value. The agency, therefore, believes that a regulatory action should not be based solely on a cost-benefit analysis, although such analysis may be a usefull indicator of which of several alternatives should be pursued to achieve a desired result.

Several current or contemplated agency action programs address the improvement in performance of all diagnostic x-ray systems, not just uncertified systems that enter the used equipment market. Although these programs involve voluntary compliance, participation by health care facilities is very high. The programs generally are designed to increase the quality of radiographs and lower radiation exposure. Nationwide programs are currently under way for mammography and dental radiology. In addition, a more general facility-based quality assurance program has been started (see the **Federal Register** of April 28, 1978 (43 FR 18207)). The agency is also working with a task force of the Conference of Radiation Control Program Directors to develop a general quality assurance program to be used by the States. The agency believes that these programs, which tend to reduce radiation exposure, improve image quality, and reduce costs are more cost effective than § 1000.16(d) in improving the performance of uncertified x-ray systems and will reach more such systems, not just those that enter into commerce.

In addition, local controls have become more effective in improving the performance of older x-ray systems. Forty-five States currently have some form of comprehensive radiation protection regulations. Of these, 26 have adopted Part F of the 1970 or 1974 version of the Suggested State Regulations for the Control of Radiation (see the **Federal Register** of July 15, 1975 (40 FR 29749)). Part F is a model state regulation for diagnostic x-ray equipment. An additional 14 States are in the process of adopting the 1974 or 1978 versions. Five States have some other form of regulation. As more States adopt the model regulation, the radiation safety of older x-ray systems will be improved. The advantage of this local control of uncertified x-ray systems is that improvements will occur whether or not the system is sold and relocated. Thus, the performance of all uncertified x-ray systems can be improved. Under these programs, poorly performing systems are found on a case-by-case basis and additional costs are borne only by owners of such systems, not by owners of systems that perform adequately.

Furthermore, attrition is gradually reducing the available supply of uncertified components. As uncertified components wear out in older uncertified systems, they will generally be replaced by certified components because of the unavailability of suitable used uncertified components. Moreover, according to a provision of § 1000.16 that FDA does not propose to change, once a certified component enters a system, any further component entering the system must also be certified (§ 1000.16(a)(2)). This process will result in the further upgrading of older x-ray systems.

This proposal to revoke § 1000.16(d) would, therefore, trade the forced upgrading of a small number of uncertified x-ray systems by a non-cost-effective approach for a more gradual upgrading of all uncertified systems by methods that would make more efficient use of resources.

Installation of Uncertified Components

FDA has compared the relative effects of § 1000.16(a) and (c). Both paragraphs have the same effect, except that § 1000.16(c) prohibits the installation of an uncertified component into any existing system, while § 1000.16(a) allows the installation if all the components of the existing system are uncertified. The agency questions whether the more restrictive prohibition in § 1000.16(c) and its effective date of August 1, 1979, is necessary or desirable.

Replacing a single uncertified component in an uncertified system with a certified component does not provide as much performance improvement as replacing the uncertified component with a group of certified components. For example, the replacement of an uncertified tube-housing assembly by a certified component when the other components of the system are uncertified may not provide the same improvement in radiation protection performance as replacing both the tube-housing assembly and the beam-limiting device.

A related issue was addressed in a final rule published in the **Federal Register** of November 8, 1977 (42 FR 58167), in which the agency indicated that, for stationary, general-purpose x-ray systems, the additional cost of a beam-limiting device providing positive beam limitation (PBL) is not always justified for older systems when the PBL device is added to the x-ray system as a replacement for the original beam-limiting device. Therefore, the regulation requires that stationary, general-purpose x-ray systems be equipped with beam-limiting devices providing PBL only if the system also contains a tube-housing assembly, x-ray control, and, for those systems so equipped, an x-ray table, all of which have been certified under § 1020.30.

In another action (see the **Federal Register** of February 24, 1978 (43 FR 7654)), FDA proposed to formalize in the regulations the existing policies for repairing systems. Recognizing that repair by exchange of identical components minimizes service interruption and allows more efficient repair at locations other than at the site where the component is used, the FDA policies had allowed, independently of § 1000.16(a), (c), and (d), the installation basis when an identical model is installed in place of a malfunctioning component. No substantive negative comments were received regarding this proposal.

The agency believes that these two actions have minimized the differences between § 1000.16(a) and § 1000.16(c). In place of § 1000.16(c) and (d), FDA proposes to remove the August 1, 1979 expiration date from § 1000.16(a), which is currently in effect and which is understood by the radiological community. The agency believes § 1000.16(a) has established the controls necessary to protect the integrity of certified equipment and to promote the upgrading of systems containing uncertified components.

Public Participation

On September 1, 1978, a summary of the cost-benefit analysis and the rationale for the action proposed in this notice was distributed to interested manufacturers, dealers, assemblers, and members of the general public to allow early public participation in the development of the proposed amendment. FDA received more than 50 comments, most of which favored changing the policy concerning the reassembly of x-ray components. Several manufacturers, however, urged that no change should take place.

Many of the comments suggested that certain variables in the cost-benefit analysis had been estimated incorrectly because the cost-benefit analysis used average values in some cases.

The agency recognizes that although use of average values in conducting a cost-benefit analysis is imprecise, a sensitivity analysis has shown that it is unlikely that the major cost-benefit conclusions are incorrect. Furthermore, the cost-benefit analysis is not the sole basis for this proposal. It has, however, been used to indicate how this proposed agency action would be more appropriate than other possibilities.

Another group of comments indicated that dealers and manufacturers may have already made investments and marketing plans in contemplation of the August 1, 1979, effective date. Changing the regulation at this point could result in an economic loss.

FDA believes that the adverse economic consequences of allowing § 1000.16(c) and (d) to become effective as scheduled would be far greater than those resulting from its elimination.

The documents distributed for public comment, together with the comments received, are on file with the Hearing Clerk, Food and Drug Administration.

Under section 358(f) of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), a draft of this proposal and a summary of comments received were presented to the Technical Electronic Product Radiation Safety Standards Committee for its review at its 17th meeting on November 9, 1978. This Committee is a permanent statutory advisory committee to the Secretary of Health, Education, and Welfare, that must be consulted before establishment or amendment of performance standards for electronic products. At this meeting, the Committee did not concur with the Bureau's position concerning amending § 1000.16. FDA's Bureau of Radiological Health communicated with the Committee by letter on December 11, 1978, and presented a revised proposal and reviewed the Bureau's position. A majority of the Committee has since concurred with issuing this revised proposal for public comment.

Inventories of Uncertified Components

FDA has also reviewed § 1000.16(b), which was intended to minimize the economic impact incurred by manufacturers and assemblers because of their inventories of uncertified components that, under § 1000.16(a), could not be assembled together with certified components after August 1, 1974. It is unlikely, after 5 years, that there is a significant number of new systems, composed of both certified and uncertified components, that were purchased before August 1, 1974, but not yet assembled. The agency has therefore determined that § 1000.16(b) is no longer needed in the regulations.

Other Actions Pending

In another proposal (see the **Federal Register** of February 24, 1978 (43 CFR 7654)), FDA proposed to recodify § 1000.16 by removing it from 21 CFR Part 1000, Subpart B—Statements of Policy and Interpretation, and placing it into 21 CFR Part 1020—Performance Standards for Ionizing Radiation Emitting Products, where it would be designated § 1020.30(p). This proposal was made to identify these policies and interpretations more clearly as additions to or clarifications of the specific requirements of the performance standard. The February 1978 proposal would also amend the provisions currently cofidied in § 1000.16(a)(4) to clarify the fact that replacement of components during reassembly of an existing x-ray system is permitted, and revoke § 1000.16(e) because it duplicates the requirements of § 1020.30(d). The agency anticipates that the February 1978 proposal and the current proposal will be combined into a single final rule because no substantive comments were received on the earlier proposal concerning recodification.

Proposed effective date: FDA proposes that these amendments become effective on the date of publication of the final rule in the **Federal Register.** This early effective date is necessary because the parts of the regulations that this amendment would repeal will become effective on August 1, 1979.

References

The following references are on file with the Hearing Clerk, FDA (address below) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

(1) Bureau of Radiological Health, FDA, "A Second Look at the Costs and Benefits Associated With the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly, Draft No. 3," Rockville, MD, 1979.

(2) National Council on Radiation Protection and Measurements, "Medical X-Ray and Gamma Ray Protection for Energies up to 10 MeV," Report No. 33, Washington, DC, 1968.

The agency has carefully considered the environmental effects of the proposed regulations, and because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 as amended (42 U.S.C. 263f)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 1000 be amended in § 1000.16 by revising the introductory text of paragraph (a), revising paragraph (a)(4), and deleting and reserving paragraphs (b), (c), and (d) as follows:

§ 1000.16 Assembly and reassembly of diagnostic x-ray systems.

* * * * *

(a) Specified components that are assembled after August 1, 1974, into those x-ray systems that contain, or will contain upon completion of the assembly, one or more components

certified pursuant to § 1020.30(c) of this chapter, shall be only those that have themselves been so certified. For example, after August 1, 1974:

* * * * *

(4) An assembler may reassemble a previously existing (used) system for resale whether or not the system is composed of all uncertified or a combination of certified and uncertified components. However, any new components added to an original system composed of one or more certified components must be certified.

(b)–(d) [Reserved]

* * * * *

Interested persons may, on or before May 17, 1979 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. This 30-day comment period is necessary to afford the agency sufficient time to evaluate comments received on this notice and to reach a final decision before the August 1, 1979 date specified in the existing regulations. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: April 10, 1979.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[Docket No. 76N–0055]
[FR Doc. 79–11677 Filed 4–16–79; 8:45 am]
BILLING CODE 4110–03–M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 216]

Procedures for Involving Public Formulation of Standards, Criteria, and Guidelines That Apply to Forest Service Programs

AGENCY: Forest Service, USDA.

ACTION: Proposed Rule.

SUMMARY: Section 14 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (hereafter RPA), added by section 11 of the National Forest Management Act of 1976 (hereafter NFMA), provides for the establishment by regulations of procedures *"to give the Federal, State and local governments, and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."* These regulations describe a process to accomplish this. They apply to programs of Research, State and Private Forestry, and the National Forest System.

These regulations do not apply to public participation for developing and revising land management planning under section 6 of the NFMA which is a separate public involvement process that is set forth in proposed regulations published in Vol. 43, **Federal Register**, page 39046, on August 31, 1978.

DATES: Comments must be received on or before June 18, 1979.

ADDRESS: Send comments to: Chief, Forest Service, P.O. Box 2417, Washington, D.C. 20013. All written comments will be available for public review in Room 3250, South Agriculture Building, 12th and Independence Avenue, S.W., Washington, D.C., 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne R. Nicolls, Office of Information, P.O. Box 2417, Washington, D.C. 20013, 202/447–7013.

SUPPLEMENTARY INFORMATION: On November 21, 1977, the Secretary of Agriculture published in the **Federal Register** a proposed rule to amend 36 CFR Chapter II by adding Part 216 which would implement the provision of section 14 of RPA, as amended, for public participation in standards, criteria and guidelines formulation for Forest Service programs.

More than 150 comments were received from local and State governments, Federal agencies, business and industry representatives, private organizations and citizens, the Committee of Scientists established under Section 6(h) of NFMA, and from people within the Forest Service. These comments and their analyses are available for public review in the office of the Chief, Forest Service, at the above address.

This process provided valuable guidance in developing the proposed regulations which follow this discussion. Many of the comments identified the basic problem that the proposed regulations did not adequately clarify those circumstances in which the public would be involved in commenting on standards, criteria, and guidelines.

Some program standards, criteria, and guidelines, as illustrated in the examples below, are by their nature of limited importance or public interest while others, including a few of those illustrated, are of major importance and of demonstrated or anticipated interest to the public.

The Act under which these regulations are being prepared and which requires their establishment states that their purpose is *"to give the Federal, State, and local governments and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."* The formulation of standards, criteria, and guidelines is an integral part of Forest Service planning and decisionmaking, and is closely linked to the National Environmental Policy Act of 1969 (hereafter NEPA) process. Public participation is a vital component of each process.

In carrying out its duties, the Forest Service uses numerous standards, criteria and guidelines to cover a broad variety of activities in which the Service is involved. For example, they include the administrative details of how the uniform is to be worn under a variety of circumstances in field work, office work, and other formal and informal occasions. They include such things as how to maintain equipment and property, from simple hand tools to heavy construction equipment and aircraft to buildings, bridges, and lookout towers.

There are also standards, criteria and guidelines for resource management and use, including such minor items as the recommended dimensions of recreation area fireplaces, and the spacing for various tree species in various size and age classes. There are also standards, criteria and guidelines related to such things as ski area use rates, development levels in camp and picnic grounds, total size and duration of timber sales, size and shape and spacing of timber harvest areas, and road construction and timber stand improvement projects, some of which may involve herbicide application.

Further, within the Forest Service is a broad representation of professions whose members are employed for their professional or specialized training and expertise. Their qualifications for the most part include knowledge of, and

capability to apply, various standards, criteria, and guidelines typical of their professions or specialties. Examples of these are stress standards in bridge construction for engineers, printing and binding specifications for publication specialists, scientific and professional publications and quality control standards in tree nursery stock for foresters in nursery management. While many of these are obviously important for various reasons in a limited area of application, they may or may not reasonably require public participation in their establishment. Many such standards are scientific principles involving little or no exercise of policy judgment amenable to public comment.

We believe the NFMA intended to assure that a requirement is set for public notification of and an opportunity to comment on the formulation of program standards, criteria, and guidelines: (1) That are *significant* and in which there is public interest or anticipated interest; and (2) where that involvement may meaningfully contribute to the development of a standard, criterion, or guideline.

As a result, and in response to public comments, we propose to use a decision process similar to the Forest Service NEPA process as the procedure to determine the significance of standards, criteria, and guidelines. Because these revised regulations are markedly different from the draft published earlier, they are again published in draft to allow further public comment before adoption of final rules. Accordingly, we propose to amend 36 CFR, Chapter II by adding Part 216, as follows:

PART 216—PROCEDURES FOR INVOLVING THE PUBLIC IN THE FORMULATION OF STANDARDS, CRITERIA, AND GUIDELINES THAT APPLY TO FOREST SERVICE PROGRAMS

Sec.

216.1 Definitions.
216.2 Applicability.
216.3 Process.
216.4 Documentation.
216.5 Notification and invitation to comment.
216.6 Availability of standards, criteria, and guidelines.

Authority: Section 14, 88 Stat. 476, as amended, 90 Stat. 2949, 2958, 16 U.S.C. 1612.

§ 216.1 Definitions.

As used in this Part:

(a) "Program" means land and resource activities, or combinations of them, conducted by the Forest Service to meet its statutory responsibilities, implemented through National Forest regulations in this title, the Forest Service Manual and Handbooks, and other directives as provided in section 200 of this title. Generally, support activities, such as personnel matters and procurement and service contracting, are not included under this definition of programs.

(b) "Standards, criteria, and guidelines" mean quantitative and qualitative measures and policy directions which establish sideboards for, or the general framework of, the conduct of Forest Service programs, expressed in National Forest regulations, the Forest Service Manual and Handbooks, and other directives.

§ 216.2 Applicability.

(a) The process described in § 216.3 applies to the formulation of standards, criteria, and guidelines applicable to Forest Service programs originating at national and regional levels for the National Forest System. The process is also applicable to those program standards, criteria, and guidelines required for Forest Service Research and Forest Service State and Private Forestry programs originating at equivalent levels.

(b) Occasionally, standards, criteria, and guidelines formulated for programs originating at National Forest or equivalent levels may warrent use of the process and appropriate public involvement.

§ 216.3 Process.

(a) The formulation of standards, criteria, and guidelines applicable to Forest Service programs, and the determination of their significance, shall be accomplished through the following decision process which is similar to Forest Service Manual sections 1950.1 through 1954.3 as published in the **Federal Register**, Vol. 43 No. 95, May 16, 1978, and known as the "Forest Service NEPA process:"

(1) Identification of issues, concerns, and need for the standards, criteria, or guidelines being developed;

(2) Development of evaluation criteria;

(3) Gathering of related information;

(4) Formulation of alternative standards, criteria, or guidelines;

(5) Analysis of implementation effects;

(6) Evaluation of alternatives; and

(7) Identification of the preferred alternative standards, criteria or guidelines.

(b) When the standards, criteria, or guidelines are determined to be significant, Federal, State and local governments and the public shall be notified and public participation methods shall be selected and used to assure understanding of the involved issues and concerns and the need for, and importance of, the standards, criteria, and guidelines being developed. The scope and intensity of participation activities depends on the significance of the standards, criteria, or guidelines being developed.

(c) The determination of significance, pursuant to the process described in § 216.3, of the standards, criteria, or guidelines being developed shall include considering the context and intensity of anticipated effects as provided in paragraphs (c) (1) and (2).

(1) *Context.* This means that the significance must be analyzed in several perspectives, such as:

(i) Society as a whole;

(ii) The affected region;

(iii) The affected interests; and

(iv) The locality.

Significance varies with the scope of the proposal. Significance usually depends upon the effects in the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.

(2) *Intensity.* This refers to the severity of impacts of the proposal and may include among others:

(i) Impacts that may be either beneficial or adverse;

(ii) Effects of the proposal on public health or safety;

(iii) Unique characteristics within or adjacent to the area to which the proposal applies, such as historic or cultural features, special natural areas, or ecologically critical areas;

(iv) The degree to which the physical, biological, social or economic effects are likely to be highly controversial;

(v) The degree to which the possible effects involved unique or unknown risks;

(vi) The degree to which the proposal may establish a precedent for future actions, or represents a decision in principle about a future consideration;

(vii) The degree to which the proposal adds to other actions which have individually insignificant, but cumulatively, significant, impacts. (Significance exists if it is reasonable to anticipate a cumulatively significant impact. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.);

(viii) The degree to which the proposal may affect listing for the National Register of Historic Places, or may affect scientific, cultural, or historical resources; and

(ix) The degree to which the proposal may affect an endangered or threatened species or its habitat.

(d) Known or anticipated public interest in the proposal standards, criteria, or guidelines shall also be considered in determining their significance for the purpose of deciding whether to notify and involve Federal, State and local governments, and the public.

§ 216.4 Documentation.

The determination of significance pursuant to the process in § 216.3 shall be documented in a report. The report must include:

(a) Need for, and issues surrounding, the proposed standards, criteria, or guidelines;

(b) Evaluation criteria;

(c) Alternative standards, criteria, or guidelines considered;

(d) Effects of implementation;

(e) Evaluation of alternatives; and

(f) Identification of the Forest Service preferred alternative.

§ 216.5 Notification and invitations to comment.

(a) If significance is determined, the report required in § 216.4 shall be published in the **Federal Register** as public notice, together with an invitation to Federal, State and local governments, and the public to comment in writing on the proposed standards, criteria, or guidelines. Additional public participation activities, such as meetings, conferences, seminars, workshops, and tours may be conducted to inform the public and invite comment.

(b) Comments shall be accepted for 60 days following publication of the report.

(c) When proposed standards, criteria, or guidelines only apply to local areas, newspapers of general local circulation shall carry notices that the report has been published in the **Federal Register** and that comments are invited.

(d) Comments received shall be considered in the preparation of the final standards, criteria or guidelines to be adopted.

(e) The standards, criteria, or guidelines that are adopted shall be published in the **Federal Register.**

§ 216.6 Availability of standards, criteria, and guidelines.

As a minimum, review copies of draft and adopted standards, criteria, and guidelines shall be maintained in Regional Offices and Forest Supervisor's offices when Regional programs are involved; and, in Regional Offices and national headquarters when national issues are involved. When Forest Service Research and Forest Service State and Private Forestry programs are involved, such standards, criteria, and guidelines shall be maintained at equivalent administrative offices.

M. Rupert Cutler,

Assistant Secretary.

April 11, 1979.

[FR Doc. 79-11890 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 66 and 67]

Assessment and Collection of Noncompliance Penalties; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction notice.

SUMMARY: In the **Federal Register** publication of Wednesday, March 21, 1979, at pages 17310 and 17317, the address for the public hearing to take place in San Francisco was incorrectly printed as 2153 Fremont Street. This should be changed to read 215 Fremont Street.

FOR FURTHER INFORMATION CONTACT: Robert Homiak, Attorney-Advisor, Division of Stationary Source Enforcement, Environmental Protection Agency, at (202) 755-2581.

Dated: April 11, 1979.

Marvin B. Durning,

Assistant Administrator for Enforcement.

[FRL 1204-7]

[FR Doc. 79-11958 Filed 4-16-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

[41 CFR Parts 60-1, 60-2, 60-30]

Compliance Responsibility for Equal Employment Opportunity; Addition to Preamble of Proposed Rule; Extension of Public Comment Period

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed Amendment of Part 60-2.

SUMMARY: Section 201 of Executive Order 11246, as amended (30 FR 12319; amended at 32 FR 14303 and 43 FR 46501), provides that the Secretary of Labor shall adopt such rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order. On March 20, 1979, the Department of Labor proposed changes and additions to three parts of its current regulations. One of those changes would add a requirement that contractors file an annual Affirmative Action Program summary. The Department of Labor today provides additional explanation of the proposed contents and use of that summary, and extends the public comment period on that proposal for an additional 30 days.

DATES: Comments on the proposal to amend 41 CFR Part 60-2 are invited from the public until May 21, 1979. Please note that the comment period on the proposals to amend 41 CFR Parts 60-1 and 60-30 is not being extended.

ADDRESSES: Comments should be sent to Edward E. Mitchell, Director, Division of Program Policy, Room C-3324, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Edward E. Mitchell, Director, Division of Program Policy, Room C-3324, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: On March 20, 1979, the Department of Labor proposed (44 FR 17136), several amendments to regulations in 41 CFR Chapter 60.

Among the provisions published for public comment at that time was a proposal to add a new § 60-2.14 (and renumber existing § 60-2.14 as § 60-2.15) which would require contractors to prepare and submit to the Office of Federal Contract Compliance Programs (OFCCP) annually a brief summary of their affirmative action programs (AAP) and of the results being achieved under those programs. The AAP summary would be prepared in a format to be prescribed by the Director, OFCCP; the format would be published in the **Federal Register** before becoming effective.

In the March 20, 1979, proposal, the Department of Labor, made the following statement:

> Section 60-2.14 proposes a new requirement under which contractors would prepare a brief summary of their affirmative action programs and the results being achieved under those programs. The AAP summary would be submitted to the OFCCP annually. The summarized submission would permit OFCCP to establish a priority compliance review selection system and to avoid scheduling reviews of contractors who ostensibly are complying with their affirmative action obligations with no assistance required from the Government. The submission would also permit OFCCP to develop a compliance information system which will allow it and the public to measure the success of the Federal contract compliance program in terms of the number

and character of new opportunities achieved for protected groups. Present 60–2.14, captioned "Compliance status," would be renumbered § 60–2.15.

The Department of Labor has received comments suggesting that it provide the public with more information about: (1) the extent of the information to be required in the AAP summary, (2) the need for and use to which the summary will be put, and (3) alternative sources of the information to be collected in the AAP summary. In addition, it has been suggested that the public comment period for proposed 60–2.14 be extended from 30 to 60 days, to permit the public additional opportunity to comment on that proposal.

Accordingly, the Department of Labor sets forth below additional explanatory information about the proposed program summary. In addition the public comment period on proposed 60–2.14 is extended for an additional 30 days. The comment period for the other proposals published on March 20, 1979 (41 CFR 60–1.33, 60–1.34 and 60–30.31 *et seq*) is not being extended.

As currently projected by the OFCCP, the following types of data would be included in the AAP summary:

(1) Level of goals by job groups for preceding AAP period.

(2) Level of goal achievement by job group during preceding AAP period.

(3) Level of employment of minorities and women by job groups plus total level of employment by job groups at end of preceding AAP period.

(4) Level of goals by job groups for current AAP period.

(5) Level of total employment by job groups projected for current AAP period.

(6) Hires, terminations and applications of minorities and women, by job group, for preceding AAP year.

(7) Indications of disparities (if any) in employment opportunities between minorities and women and others in the workforce.

(8) Indications of actions taken to address any such disparities.

As the Department of Labor stated in the preamble to its March 20, 1979, proposal, the AAP summary would permit OFCCP to develop accurate data on the employment of minorities and women in the American workplace. These data would be used by OFCCP to establish a priority compliance review selection system, thereby avoiding the scheduling of reviews of contractors who ostensibly are complying with their obligations under Executive Order 11246, as amended, and permitting OFCCP to concentrate its limited resources on industries and/or contractors which apear to be failing to meet Executive Order obligations. However, the information to be collected would be used for targeting purposes only; determinations of non-compliance with the Executive Order would continue to be made only upon conclusion of the compliance review procedures set forth in the remainder of 41 CFR Chapter 60. In addition, the data would permit OFCCP to measure in quantifiable terms the success of the Federal contract compliance program, and to report those results to the public.

The data which the OFCCP expects to obtain from the AAP summaries are not reasonably available through any other source. The only report now received by OFCCP on a regular basis is the Standard Form 100 (EEO–1), which summarizes employment only by nine major job categories, and contains no data on affirmative action goals, projected job opportunities, or related matters. OFCCP does not require contractors, as a matter of course, to submit AAPs on an annual basis. The AAP summary is proposed as a means of deriving relevant data from contractor AAPs and support documents without imposing the substantial paperwork burden on both contractors and OFCCP that annual AAP submission would entail.

Signed at Washington, D.C. this 13th day of April, 1979.

Ray Marshall,
Secretary of Labor.

Donald Elisburg,
Assistant Secretary, Employment Standards Administration.

Richard J. Devine,
Deputy Director, Office of Federal Contract Compliance Programs.

[FR Doc. 79–12018 Filed 4–16–79; 8:45 am]
BILLING CODE 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

Television Broadcast Station in Joplin, Mont.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of UHF television Channels 48 and 54 to Joplin, Montana, in response to a petition filed by East Butte Television Club, Inc. Petitioner states the proposed channels would permit the operation of high-powered translator stations which would provide service to a substantial population in northern Montana, significantly improving television reception in that area.

DATES: Comments must be filed on or before June 6, 1979, and reply comments on or before June 27, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 10, 1979.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Joplin, Montana). BC Docket No. 79–76, RM–3285.

By the Chief, Broadcast Bureau:

1. The Commission has before it for consideration a petition for rule making,[1] filed by East Butte Television Club, Inc.[2] ("petitioner"), requesting the amendment of the Television Table of Assignments (Section 73.606(b) of the Rules) by the assignment of UHF television Channels 46 and 52 to Joplin, Montana. No responses to the proposal have been received.

2. A staff study indicates that the use of Channel 52 at or north of Joplin would be short-spaced to a Canadian assignment. Since many alternate channels are available for assignment which would better serve petitioner's purpose, we will propose Channels 48 and 54 instead of Channels 46 and 52.

3. Joplin,[3] an unincorporated community in Liberty County (pop. 2,359), is located in north central Montana, approximately 120 kilometers (75 miles) north of Great Falls. It has no television channel assignments. Petitioner states that it will apply for and operate high powered translator stations on the proposed channels, if assigned.

4. Petitioner contends that the two proposed channel assignments would permit the operation of two high-powered 1,000 watt UHF translators. It states that the translator stations would operate from the East Butte of the Sweet Grass Hills, approximately 32 kilometers (20 miles) northwest of Joplin, with a proposed transmitter site approximately 2134 meters (7000 feet) above sea level and 1067 meters (3500 feet) above the

[1] Public Notice of the petition was given on January 3, 1979, Report No. 1157.

[2] Petitioner operates for 100 watt UHF translators in the Liberty County, Montana, area: K72AM, K74DW, K76AG and K78AH rebroadcast programs of Stations KRTV and KFBB–TV, Great Falls, Montana; CHAT–TV, Medicine Hat, Alberta, Canada, and KFCN–TV, Calgary.

[3] The Joplin county subdivision has a 1970 U.S. Census population of 508.

surrounding terrain. It claims that the translators would provide service to a substantial portion of north central Montana, significantly improving television reception in this region. Petitioner asserts that six counties in northern Montana (with approximately 50,000 persons) presently receive no Grade B signal from any television broadcast station. It alleges that high powered translators, operating from the East Butte of the Sweet Grass Hills, could provide substantially improved off-the-air service to this extensive area. Petitioner contends that although there are translators presently serving parts of this area, the quality of their signals is frequently marginal. It adds that without the operation of high powered translators, this situation is unlikely to change because the possibility of any party's applying for a full fledged station on one of the assigned VHF or UHF channels allocated to this sparsely populated six-county area is remote at best.

5. Since Joplin is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignments to Joplin, Montana, require coordination with the Canadian Government before they can be adopted.

§ 73.606 [Amended]

6. In view of the foregoing and the fact that the proposed channels could provide for high-powered translator stations which could bring substantially improved off-the-air television service to a significant population in northern Montana, the Commission proposes to amend the Television Table of Assignments (Section 73.606(b) of the Rules) as follows:

City	Channel No.	
	Present	Proposed
Joplin, Montana		48, 54–

7. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before June 6, 1979, and reply comments on or before June 27, 1979.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Wallace E. Johnson,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[BC Docket No. 79–76; RM–3285]

[FR Doc. 79–11845 Filed 4–16–79; 8:45 am]

BILLING CODE 6712–01–M

[47 CFR Part 73]

FM Broadcast Station in Incline Village, Nev.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposed the assignment of a Class A FM channel to Incline Village, Nevada, as its first FM assignment, in response to a petition filed by Thomas M. Scallen. The proposed station would provide a first local aural broadcast service to Incline Village.

DATES: Comments must be filed on or before June 6, 1979, and reply comments must be filed on or before June 27, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 5, 1979.

Released: April 10, 1979.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Incline Village, Nevada). BC Docket No. 79–77, RM–3266.

By the Chief, Broadcast Bureau:

1. The Commission has before it a petition [1] filed by Thomas M. Scallen ("petitioner"), requesting the assignment of Channel 228A to Incline Village, Nevada, as its first FM channel assignment. Channel 228A could be assigned to Incline Village in conformity with the minimum distance separation

[1] Public Notice of the petition was given on December 6, 1978, Report No. 1154.

requirements. No responses to the petition have been filed.

2. Incline Village [2] is an unincorporated community located on the north shore of the Lake Tahoe basin some 37 kilometers (23 miles) southwest of Reno, Nevada. It has no local aural broadcast service.

3. Petitioner states that the wintertime population of Incline Village is estimated to be 13,000 people and during the warmer months the population increases to 3 to 4 times this figure. He notes that more than 15 million visitors a year come to Lake Tahoe for recreational purposes. Petitioner asserts that in the past the principal attractions of the area have been those related to warm weather activities, but now the basin has one of the biggest concentrations of ski resorts in the world. Petitioner claims that the power and antenna height of the FM station at the south end of the basin are insufficient to provide good service to the northern end of the basin and asserts that signals from the AM–FM stations in Carson City and Reno suffer from high ground attenuation and intervening mountainous terrain. Because of this, he states, the northern area around Incline Village does not receive adequate service, particularly at night. Petitioner asserts that in order to determine the need for local service in the Incline Village area he interviewed a number of residents in the area and found solid support for his proposal.

4. Petitioner alleges that the northern end of Lake Tahoe Basin does not receive adequate service from the AM and FM stations in Carson City and Reno. However, a study by the Commission's engineering staff suggests that at least three FM stations include the entire Lake Tahoe area within their city-grade (70 dBu) contour. If petitioner wishes to rely on a lack of service to this area, he is requested to submit an engineering showing to support this allegation.

5. An initial review of the petition suggests that there may be a need for a first local aural broadcast service in Incline Village. The proposal is being advanced for the purpose of determining whether such an assignment is warranted. Before the Commission can conclude that the assignment is warranted certain additional information is required. Petitioner is requested to submit the following information in his comments:

(a) Information which demonstrates whether Incline Village in fact is a community. This information should include economic, political and cultural data, and any information which could demonstrate that Incline Village is a community.

(b) Information as to the permanent population of the unincorporated area in which petitioner claims Incline Village is situated, the unofficial boundary of the community and the location of the community relative to any neighboring unincorporated communities.

(c) Information on service from nearby stations in response to the concerns raised in paragraph 4.

[2] Incline Village is not listed in the 1970 U.S. Census.

§ 73.202 [Amended]

6. In view of the above, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to Incline Village, Nevada, as follows:

City	Channel No.	
	Present	Proposed
Incline Village, Nevada		228A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Comments must be filed on or before June 6, 1979, and reply comments on or before June 27, 1979.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Wallace E. Johnson,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[BC Docket No. 79–77; RM–3266]
[FR Doc. 79–11847 Filed 4–16–79; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1100]

Administrative Appeals From Motor Carrier Board Decisions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing to amend its Rules of Practice to add a new provision specifying that decisions on petitions for reconsideration of decisions of the Motor Carrier Board are administratively final. This action is being proposed to eliminate present uncertainty as to whether these decisions are appealable.

DATES: Comments should be filed on or before May 31, 1979.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James S. Todd, (202) 275–7513.

SUPPLEMENTARY INFORMATION: Section 10928 of the Interstate Commerce Act, 49 U.S.C. 10928, authorizes the Commission to grant motor or water carriers temporary operating authority to provide transportation to an area which has no transportation capable of meeting its immediate needs. Decisions concerning temporary operating authority are made by the Commission's Motor Carrier Board. Until recently, petitions for reconsideration of a decision of the Motor Carrier Board were handled by a Division of the Commission. If the Division reversed the Board, a second appeal was entertained. Under the new procedure, single Commissioners act on appeals from Motor Carrier Board decisions (see 49 C.F.R. section 1011.5(c)). When this procedure was adopted, no provision was made for further appeals from the single-Commissioner decision and no change was made in the Rules of Practice or in other Commission regulations to deal with this situation.

To clear up the confusion caused by this omission, the Commission proposes to amend its Rules of Practice to provide that single-Commissioner decisions on petitions for reconsideration shall be administratively final whether they affirm, modify, or reverse the Motor Carrier Board's decision. Temporary authorities are intended to meet an immediate transportation need, and multiple administrative appeals only serve to delay the final decision. Thus, we think that sound policy favors the elimination of any unnecessary layers of appeal. Furthermore, access to the Commission would continue to be available in extraordinary circumstance under Rule 99 (49 C.F.R. section 1100.99).

It is not expected that this proposed action will significantly affect the quality of the human environment.

§ 1100.25 [Amended]

Accordingly, we propose to amend section 1100.225 as follows:

(1) Insert new paragraph (d) reading as follows:

(d) A decision on a petition for reconsideration of a decision of the Motor Carrier Board is administratively final whether that decision affirms, modifies, or reverses the Board's decision.

(2) Combine present paragraphs (b) and (c) into a new paragraph (b), reading as follows:

(b) A petition for reconsideration of an order of the Motor Carrier Board, the Operations Board, the Special Permission Board, the Released Rates Board, or the Tariff Rules Board may be filed by any interested person. A petition for reconsideration of a Finance Board decision may be filed only by a party to the proceeding.

(3) Redesignate present paragraph (d) as (c) and strike the words "and (c)" in line 2 and insert "(d)," between "paragraph" and "(e)" in line 5.

Decided: April 5, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Gresham dissenting.

H. G. Homme, Jr.,
Secretary.

Commissioner Gresham, Dissenting:

Unless and until Congress moves to limit or reduce administrative appeals in motor carrier cases, the Commission should provide for a right of appeal to single Commissioner decisions which modify or reverse decisions of the Motor Carrier Board. Such appeals should be ruled upon by a Division of the Commission, which is the present practice that applies to other types of motor carrier cases. In effect, the majority's proposal accords more weight to the decision of a single Commissioner than is presently accorded to decisions of a division or the entire Commission which reverse or modify a prior decision.

[Ex Parte No. 55 (Sub-No. 36)]

[FR Doc. 79–11945 Filed 4–16–79; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

Notice is hereby given in accordance with Section 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet on May 8–9, 1979, in Washington, D.C.

The Council was established by the National Historic Preservation Act of 1966 (Pub. L. 89–665, as amended, Pub. L. 94–422) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretaries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health, Education and Welfare; and the Smithsonian Institution; the Attorney General; the Administrator of the General Services Administration; the Chairman of the Council on Environmental Quality; the Chairman of the Federal Council on the Arts and Humanities; the Architect of the Capitol; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

In accordance with Section 106 of the National Historic Preservation Act, the Council will consider the proposed demolition of three buildings—Isherwood, Melville, and Griffin Halls—at the U.S. Naval Academy in Annapolis, Maryland. The meeting will begin on Tuesday, May 8, at 9:00 a.m., at the U.S. Naval Academy, Annapolis, Maryland, and will continue on Wednesday, May 9, at 9:00 a.m., in the Cash Room, the Department of the Treasury, 15th and Pennsylvania Avenue, NW., Washington, D.C. The agenda for the meeting includes the following:

I. Report of the Chairman
II. Council Policy Group Reports
III. Report of the Executive Director
IV. Report of the Office of General Counsel
V. Report of the Office of Intergovernmental Programs and Planning
VI. Report of the Office of Special Studies
VII. Report of the Office of Review and Compliance—consideration of Section 106 case
VIII. Other Business

Due to controlled access to the Treasury Building, those wishing to attend must have a Government Identification Card, or notify the Council prior to the meeting by calling 202/254–3495.

Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street, NW., Washington, D.C. 20005, 202/254–3974.

Dated: April 12, 1979.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 79–11807 Filed 4–16–79; 8:45 am]

BILLING CODE 4210–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Land and Resource Management Plan; Wallowa-Whitman National Forest; Baker, Grant, Malheur, Union, Umatilla and Wallowa Counties; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Impact Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for a Land and Resource Management Plan for the Wallowa-Whitman National Forest. This Forest Plan will be developed in accordance with direction for land and resource management planning in the National Forest Management Act of 1976.

The Forest Plan will provide management direction for all lands and resources in the Wallowa-Whitman National Forest (that portion of the Forest within the boundaries of the Hells Canyon National Recreation Area will be determined in accordance with the land and resource management plan presently being developed for the NRA) and will replace existing land management plans.

A number of issues, concerns and management opportunities were identified in recent intensive public involvement efforts. The list of those issues identified will be updated through ongoing involvement with various agencies, organizations and individuals who are interested in the management of the Forest. Based on an analysis of these issues a resource inventory will be conducted. After completion of the inventory, alternatives will be developed to address identified issues and management concerns. The alternatives will be displayed in an environmental impact statement and will include (1) a no action alternative, (2) one or more alternatives which will result in eliminating all backlogs of needed treatment for the restoration of renewable resources, (3) an alternative which approximates the levels of goods and services assigned by the Regional Plan, and (4) one or more alternatives formulated to resolve the major public issues or concerns.

The Draft Environmental Impact Statement is scheduled to be filed by December 31, 1980. The Final Environmental Impact Statement is to be filed in September 1981.

R. E. Worthington, Regional Forester, Pacific Northwest Region is the responsible official. Bruce L. McMillan, Wallowa-Whitman National Forest, Baker, Oregon, will be the team leader for the Environmental Analysis and Impact Statement.

Comments on this Notice of Intent on the Forest Plan should be sent to A. G. Oard, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814.

Dated: April 6, 1979.

Frank J. Kopecky,
Acting Regional Forester.

[FR Doc. 79–11818 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–11–M

Okanogan National Forest; Tonasket Ranger District Fiscal Year 1979 Noxious Weed Control Program

An Environmental Assessment that discusses the FY 1979 Noxious weed control program on the Tonasket Ranger District, involving the control of diffuse knapweed *(Centaurea diffusa)* and Canadian thistle *(Cirsium arvense)* using the herbicide 2,4–D, along the shoulders and cut and fill slopes of Forest roads involving a total of 50 acres has been prepared. The treatments and treatment areas proposed for diffuse knapweed are included in the Final Environmental Statement for Vegetation Management with Herbicides, USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised). Treatment areas involving Canadian thistle are not discussed in the Final Environmental Statement. Treatment, conditions and areas are the same as those for diffuse knapweed. All proposed treatment areas are located on National Forest lands within Okanogan County, Washington. The report is available for public review at the Tonasket Ranger Station in Tonasket, Washington, and the Okanogan National Forest Office in Okanogan, Washington.

This project involves the ground application of the herbicide 2,4–D to 50 acres on shoulders and cut and fill slopes of Forest Roads to achieve control of the noxious weeds. The Environmental Assessment does not indicate that this is a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that an environmental impact statement is not needed.

This determination was based upon consideration of the following factors, which are discussed in detail in the Environmental Assessment: (a) Management requirements and constraints ensuring mitigation of potentially significant adverse effects; (b) compliance with policies and precautions outlined in the Final Environmental Statement for Vegetation Management with Herbicides USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised); (c) treatment areas involving Candian thistle are similar to the diffuse knapweed areas dicussed in the Final Environmental Statement for Vegetation Management; (d) no irreversible or irretrievable resource commitments; (e) no known threatened or endangered plants or animals are within the affected area; (f) physical and biological effects are limited to the treatment areas; and (g) use of a herbicide EPA registered for the intended use, and applied according to all regulations and policies applicable at the time of treatment.

Some public concern has been expressed about possible effects upon water quality and the environment from herbicide application. The assessment and implementation plan for the proposed project include measures to protect water quality and minimize drift from the treatment areas. State and Federal Water Quality Standards will be met.

No action will be taken prior to May 17, 1979.

The responsible official is William D. McLaughlin, Forest Supervisor, Okanogan National Forest, P.O. Box 950, Okanogan, Washington, 98840.

Dated: April 2, 1979.

Irving E. Smith,
Forest Supervisor.

[FR Doc. 79–11817 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–11–M

Okanogan National Forest; Twisp Ranger District Fiscal Year 1979 Noxious Weed Control Program

An Environmental Assessment that discusses the FY 1979 Noxious weed control program on the Twisp Ranger District, involving the control of diffuse knapweed (*Centaurea diffusa*) on 3 areas consisting of one administrative horse pasture and two dispersed recreation areas, involving a total of 50 acres, has been prepared. The treatments and treatment areas proposed are included in the Final Environmental Statement for Vegetation Management with Herbicides, USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised). All proposed treatment areas are located on National Forest lands within Okanogan County, Washington. The report is available for public review at the Twisp Ranger Station in Twisp, Washington, and the Okanogan National Forest Office in Okanogan, Washington.

This project involves the ground application of the herbicide 2,4–D to 50 acres on three sites to achieve control of the noxious weed, diffuse knapweed. The Environmental Assessment does not indicate that this is a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that an environmental impact statement is not needed.

This determination was based upon consideration of the following factors, which are discussed in detail in the Environmental Assessment: (a) Management requirements and constraints ensuring mitigation of potentially significant adverse effects; (b) compliance with policies and precautions outlined in the Final Environmental Statement for Vegetation Management with herbicides USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised); (c) no irreversible or irretrievable resource commitments; (d) no known threatened or endangered plants or animals are within the affected area; (e) physical and biological effects are limited to the treatment areas; and (f) use of a herbicide EPA registered for the intended use, and applied according to all regulations and policies applicable at the time of treatment.

Some public concern has been expressed about possible effects upon water quality and the environment from herbicide application. The assessment and implementation plan for the proposed project include measures to protect water quality and minimize drift from the treatment areas. State and Federal Water Quality Standards will be met.

No action will be taken prior to May 17, 1979.

The responsible official is William D. McLaughlin, Forest Supervisor, Okanogan National Forest, P.O. Box 950, Okanogan, Washington 98840.

Dated: April 2, 1979.

Irving E. Smith,
Forest Supervisor.

[FR 79–11815 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–11–M

Okanogan National Forest; Winthrop Ranger District Fiscal Year 1979 Noxious Weed Control Program

An Environmental Assessment that discusses the FY 1979 Noxious Weed Control Program on the Winthrop Ranger District, involving the control of diffuse knapweed (*Centaurea diffusa*) on two administrative horse pastures involving a total of 75 acres has been prepared. The treatments and one of the treatment areas proposed, are included in the Final Environmental Statement for Vegetation Management with Herbicides, USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised). One proposed area involving 15 acres is not included in the Final Environmental Statement for Vegetative Management with Herbicides. Conditions on this area are similar to proposals included in the Final Environmental Statement. All proposed treatment areas are located on National Forest lands within Okanogan County, Washington. The report is available for public review at the Winthrop Ranger Station in Winthrop, Washington, and the Okanogan

National Forest Office in Okanogan, Washington.

This project involves the ground application of the herbicide 2,4–D to 75 acres on two sites to achieve control of the noxious weed, diffuse knapweed. The Environmental Assessment does not indicate that this is a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that an environmental impact statement is not needed.

This determination was based upon consideration of the following factors, which are discussed in detail in the Environmental Assessment: (a) Management requirements and constraints ensuring mitigation of potentially significant adverse effects; (b) compliance with policies and precautions outlined in the Final Environmental Statement for Vegetation Management with Herbicides USDA, USDA–FS–R6–FES (Adm) 75–18 (Revised); (c) the 15 acre project not covered by the Final Environmental Statement for Vegetation Management with Herbicides is similar to other projects listed therein; (d) no irreversible or irretrievable resource commitments; (e) no known threatened or endangered plants or animals are within the affected area; (f) physical and biological effects are limited to the treatment areas; and (g) use of a herbicide EPA registered for the intended use, and applied according to all regulations and policies applicable at the time of treatment.

Some public concern has been expressed about possible effects upon water quality and the environment from herbicide application. The assessment and implementation plan for the proposed project include measures to protect water quality and minimize drift from the treatment areas. State and Federal Water Quality Standards will be met.

No action will be taken prior to May 17, 1979.

The responsible official is William D. McLaughlin, Forest Supervisor, Okanogan National Forest, P.O. Box 950, Okanogan, Washington 98840.

Dated: April 2, 1979.

Irving E. Smith,

Forest Supervisor.

[FR Doc. 79–11816 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Big Slough Watershed, Fla.; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding of the Big Slough Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Envionmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for deauthorization of Federal funding of the Big Slough Watershed located in Sarasota, Manatee, DeSoto, and Charlotte Counties, Florida.

The watershed project was planned in 1964 and 1965 and approved for operations in 1965. However, none of the planned structural measures consisting of 57 miles of channel modification and 21 grade stabilization structures have been installed. The sponsoring local organizations made the decision not to implement the project.

The environmental assessment of this action indicates that deauthorization of Federal funding will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William E. Austin, State Conservationist, has determined that an environmental impact statement is not needed for the proposed deauthorization.

The basic data developed during planning and the environmental assessment may be reviewed at the Soil Conservation Service Florida State Office, 401 S.E. 1st Avenue (P.O. Box 1208), Gainesville, Florida 32602, 904–377–8732.

The notice of intent not to prepare an environmental impact statement, along with an environmental impact appraisal, has been forwarded to the Environmental Protection Agency as well as other interested agencies and organizations. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until June 18, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Public Law 83–566, 16 U.S.C. 1001–1008)

Dated: April 9, 1979.

Josph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79–11820 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–16–M

California Lake Watershed, Florida; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding of the California Lake Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the California Lake Watershed located in Dixie County, Florida.

The watershed project was planned in 1966 and 1967 and approved for operations in 1969. However, none of the planned structural measures consisting of 30.7 miles of channel modification and 6.4 miles of diversion channel and dike have been installed. The sponsoring local organizations made the decision not to implement the project.

The environmental assessment of this action indicates that deauthorization of Federal funding will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William E. Austin, State Conservationist, has determined that an environmental impact statement is not needed for the proposed deauthorization.

The basic data developed during planning and the environmental assessment may be reviewed at the Soil Conservation Service Florida State Office, 401 S.E. 1st Avenue (P.O. Box 1208), Gainesville, Florida 32602, 904–377–8732.

The notice of intent not to prepare an environmental impact statement, along with an environmental impact appraisal, has been forwarded to the Environmental Protection Agency as well as other interested agencies and organizations. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until June 18, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection

and Flood Prevention Program, Public Law 83–566, 16 U.S.C. 1001–1008)

Dated: April 9, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79–11819 Filed 4–16–79; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

Humanely Slaughtered Livestock; Identification of Carcasses; List of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 391.1, the following table lists the establishments operating under Federal inspection pursuant to the Federal Meat Inspection Act, as amended (21 U.S.C. 601 *et seq.*), which have been officially reported as using humane methods of slaughter and incidental handling of the species of livestock respectively designated for such establishments in the table. Additions to and deletions from this list will be made from time to time as the facts may warrant by notices published in the **Federal Register.** The establishment number given with the name of the establishment is branded on each carcass of livestock inspected and passed at that establishment. The table should not be understood to indicate that all species of livestock slaughtered at a listed establishment are slaughtered and handled by humane methods unless all such species are listed for that establishment in the table. Nor should the table be understood to indicate that the affiliates of any listed establishment use only humane methods.

BILLING CODE 3410–37–M

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
ARMOUR FOOD CO	2AT					(*)	
ARMOUR & CO-	2CC	(*)					
ARMOUR & CO-	2H					(*)	
ARMOUR & CO-	2SD					(*)	
ARMOUR & CO-	2W					(*)	
ARMOUR & CO-	2WN	(*)				(*)	
SWIFT & CO	3AE					(*)	
SWIFT & CO	33W	(*)	(*)	(*)	(*)		
SWIFT FRESH MEATS CO	3C	(*)				(*)	
SWIFT & CO	3CN			(*)	(*)		
SWIFT FRESH MEATS CO	3D	(*)					
SWIFT & CO	3G	(*)					
SWIFT FRESH MEATS CO	3GI	(*)					
SWIFT & CO	3GW					(*)	
SWIFT & CO	3H	(*)				(*)	
SWIFT & CO	3L					(*)	
SWIFT & CO	3N	(*)				(*)	
SWIFT & CO	3S					(*)	
SWIFT & CO	3Y	(*)					
SWIFT & CO	3Z	(*)					
LYKES BROS INC	8	(*)	(*)				
LYKES BROS INC	88	(*)	(*)				
PAULY PACKING CO INC	10	(*)	(*)				
FRENCH CITY MEATS INC-	11	(*)	(*)			(*)	
HYGRADE FOOD PRODUCTS CORPORATION-	12A					(*)	
HYGRADE FOOD PRODUCTS CORPORATION-	12FW	(*)	(*)				
HYGRADE FOOD PRODUCTS CORPORATION-	12P	(*)					
JOHN MORRELL & CO-	17A	(*)				(*)	
JOHN MORRELL & CO-	17D	(*)		(*)		(*)	
JOHN MORRELL & CO-	17E					(*)	
JOHN MORRELL & CO-	17U	(*)					
WILSON FOODS CORPORATION	20H					(*)	
WILSON FOODS CORPORATION	20I	(*)				(*)	
WILSON FOODS CORPORATION	20L	(*)				(*)	
WILSON FOODS CORPORATION	20MO					(*)	
WILSON FOODS CORPORATION	20Q	(*)	(*)			(*)	
WILSON FOODS CORPORATION	20Y	(*)	(*)	(*)		(*)	
PATRICK CUDAHY INC	28					(*)	
KREINBERG AND KRASNY INC	30	(*)					
SUPERIOR BRAND MEATS INC	31	(*)				(*)	
THE ROESELEIN CO	32					(*)	
VALLEYDALE PACKERS INC	34	(*)	(*)			(*)	
KENTON PACKING CO-	36	(*)	(*)			(*)	
TOP-LINE PACKING CO-	37	(*)	(*)			(*)	
SUNNYLAND FOODS INC-	43					(*)	
BROOKS COUNTY PACKING CO INC	43B					(*)	
IDAHO MEAT PACKERS	46	(*)		(*)			
DUGDALE PACKING CO	53	(*)				(*)	
SUNNYLAND PACKING CO OF ALABAMA-	56	(*)					
SUNNYLAND PACKING CO OF ALABAMA-	56A					(*)	
GLOVER PACKING CO-	60A	(*)				(*)	
GOOCH PACKING CO INC	61	(*)	(*)		(*)	(*)	
SUNFLOWER BEEF PACKERS INC	62	(*)					
SANDUSKY DRESSED BEEF CO	63	(*)					
BARC MEAT PROCESSING PLANT	68	(*)	(*)	(*)		(*)	
AUBURN UNIVERSITY MEAT LABORATORY-	71	(*)		(*)		(*)	
COUNTRY MEATS INC-	72	(*)		(*)		(*)	
BROWN THOMPSON & SON	73					(*)	
GLASGOW PACKING CO	76	(*)					
DINNER BELL FOODS INC-	79A					(*)	
DINNER BELL FOODS INC-	79B	(*)				(*)	
DINNER BELL FOODS INC-	79C					(*)	
CUDAHY CO-	81					(*)	
EDGAR PACKING CO INC	84			(*)			
MBPXL CORPORATION-	86	(*)					
MBPXL CORPORATION-	86D	(*)					
MBPXL CORPORATION-	86E	(*)					
MBPXL CORPORATION-	86H	(*)					

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 2 OF 25 PAGE(S)

NAME OF ESTABLISHMENT		EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
UTICA VEAL CO INC		88	(*)					
KAHN'S & CO		89	(*)	(*)			(*)	
PEET PACKING CO		90					(*)	
LAREDO PACKING CO INC		91	(*)					
SUGARDALE FOODS INC		92	(*)				(*)	
LANE PACKING INC		93	(*)	(*)	(*)		(*)	
THE VAL DECKER PACKING CO		95	(*)				(*)	
CENTRAL PACKING CO INC		96	(*)	(*)				
A KOCH'S SONS INC		98	(*)	(*)				
ARMOUR & CO		100	(*)		(*)			
LIBERTY PACKING CO		101	(*)	(*)				
WILSON FOODS CORPORATION		111	(*)		(*)		(*)	
M & R PACKING CO	E	113						(*)
M & R PACKING CO	E	113W						(*)
FARMLAND FOODS INC		114	(*)					
THE MERCHANTS CO		116	(*)	(*)			(*)	
JOHN MORRELL & CO		126	(*)					
CASH BROTHERS PACKING		127	(*)	(*)	(*)	(*)	(*)	
JOHN ROTH AND SON INC		130	(*)					
FERRARA MEAT CO INC		134	(*)	(*)				
NEBRASKA BEEF PACKERS INC		135	(*)					
KLUENER PACKING CO		142	(*)	(*)				
R B RICE COMPANY OF MISSOURI INC		144	(*)				(*)	
OLLIE WELCH MEAT CO INC		153	(*)	(*)				
DALLAS CITY PACKING INC		156	(*)	(*)				
CORNLAND DRESSED BEEF CO		157	(*)					
GREAT PLAINS BEEF CO		158	(*)					
CORNELL UNIVERSITY ANIMAL SCIENCE		165	(*)	(*)	(*)		(*)	
BROWN PACKING CO		167			(*)			
E W KNEIP INC		169	(*)					
ARMOUR & CO		177	(*)					
THE AMERICAN MEAT PACKING CORPORATION		180					(*)	
THE RATH PACKING CO		186					(*)	
CARL'S SAUSAGE CO		188					(*)	
SEATTLE PACKING CO		191					(*)	
HYNES PACKING CO		197	(*)	(*)	(*)			
UNITED PACKING CO		198	(*)		(*)			
GEORGE A HORMEL & CO		199	(*)				(*)	
GEORGE A HORMEL & CO		199A	(*)		(*)			
GEORGE A HORMEL & CO		199D					(*)	
GEORGE A HORMEL & CO		199H	(*)					
GEORGE A HORMEL & CO		199I					(*)	
GEORGE A HORMEL & CO		199N	(*)				(*)	
GEORGE A HORMEL & CO		199O					(*)	
CAVINESS PACKING CO INC		200	(*)					
DUGDALE PACKING CO		203	(*)					
EMGE PACKING CO INC		205	(*)				(*)	
NATIONAL BEEF PACKING CO		208A	(*)					
PENN PACKING CO		212					(*)	
E W KNEIP INC		213	(*)					
MARSHALL MEAT PRODUCTS		215	(*)					
LINCOLN MEAT CO INC		217	(*)					
YORK PACKING CO INC		220					(*)	
ITT GWALTNEY INC		221A					(*)	
DE JONG PACKING CO		223	(*)	(*)				
HYGRADE FOOD PRODUCTS CORPORATION		224	(*)				(*)	
HYGRADE FOOD PRODUCTS CORPORATION		224B	(*)	(*)				
INDEPENDENCE MEAT CO		226	(*)	(*)			(*)	
GOLD MERIT BEEF PROCESSORS INC		232	(*)	(*)				
JOHN MORRELL & CO		234	(*)					
TEXAS TECHNOLOGICAL UNIV MEAT LAB		236	(*)		(*)		(*)	
SIOUX-PAC OF IOWA INC		237	(*)					
SHREVEPORT PACKING CO INC OF KANSAS		239	(*)					
LUBBOCK BEEF PROCESSORS INC		239R	(*)					
P D AND J MEATS		240	(*)	(*)	(*)			
GREENWOOD PACKING PLANT		242	(*)				(*)	
IOWA BEEF PROCESSORS INC		245	(*)					
IOWA BEEF PROCESSORS INC		245A	(*)					

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 3 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
IOWA BEEF PROCESSORS INC	2458	*					
IOWA BEEF PROCESSORS INC	245C	*					
IOWA BEEF PROCESSORS INC	245D	*					
IOWA BEEF PROCESSORS INC	245E	*					
COLUMBIA FOODS DIV IOWA BEEF PROCESSORS INC	245G	*					
JOHN MORRELL & CO	246	*				*	
MAGIC VALLEY PACKING CO	258	*					
GEM PACKING CO INC	259	*		*			
HYPLAINS DRESSED BEEF INC	262	*					
JONES DAIRY FARM	263					*	
FARM PAC KITCHENS INC	266	*		*		*	
GOLDEN VALLEY PACKING CO	271	*					
TOG PACKING CO INC	273	*					
ALPHA BETA ACME MARKETS INC	279	*		*		*	
PARNETT PACKING CORPORATION	283	*					
SOLANO MEAT CO	285	*		*		*	
FLAVORLAND INDUSTRIES INC	288	*					
ARBOGAST & BASTIAN INC	289					*	
SAN JOSE MEAT CO INC	291	*		*			
ARMOUR & CO	292					*	
IOWA BEEF PROCESSORS INC	292A	*					
GUS JUENGLING AND SON INC	298	*		*			
PACIFIC BY-PRODUCTS INC	302	*					
UNION PACKING CO	305	*		*			
SERV U MEAT PACKING CO	306	*					
A GEMMEN & SONS INC	308	*		*		*	
RUDYS FARM CO	315					*	
ESTES PACKING CO	319	*		*		*	
STADLER PACKING CO INC	320	*				*	
PIERCE PACKING	322	*		*	*	*	
RUDNICK PACKING CO INC	325	*			*		
GOLDEN STATE FOODS CORPORATION	327	*			*	*	
C & M MEAT PACKING CORPORATION	329	*		*			
ROYAL PACKING CO	331A	*					
SHAPIRO PACKING CO INC	332	*					
GREAT WESTERN PACKING CO INC	334	*					
NOBLE'S MEAT CO	335	*		*			
DAIRY VALLEY MEAT INC	336	*		*			
SAM KANE BEEF PROCESSORS INC	337	*		*			
GREEN & OLIVER SAUSAGE CO	338					*	
MIDLAND EMPIRE PACKING CO INC	339	*					
SWIFT & CO	340	*					
PUCKETT PACKING CO	343	*				*	
GOLD-PAK MEAT CO INC	344	*		*			
ANZA MEAT PACKING CO	345	*					
UNION PACKING CO OF OMAHA	351	*					
FRESNO MEAT PACKING CO	354	*		*			
HERNANDO PACKING CO	355	*		*			
SUNSTAR FOODS	357	*					
CLOUGHERTY PACKING CO	360					*	
WILSON FOODS CORPORATION	374	*				*	
CROSS BROS MEAT PACKERS INC	376	*		*		*	
SALINAS MEAT CO	378	*		*		*	
EMGE PACKING CO INC	380	*				*	
SMITHFIELD PACKING CO INC	382	*				*	
SMITHFIELD PACKING CO INC	382F					*	
AMERICAN STORES PACKING CO	384	*					
FREEDMAN PACKING INC	387	*		*			
DUGDALE PACKING CO	390	*					
OLDHAM'S FARM SAUSAGE CO INC	392					*	
HUISKEN MEAT CENTER	394	*		*		*	
DUBUQUE PACKING CO	396	*		*		*	
DUBUQUE PACKING CO	396C	*					
DUBUQUE PACKING CO	396D	*					
DUBUQUE PACKING CO	396E	*				*	
DUBUQUE PACKING CO	396H	*					
UMNAK MEATS	399	*			*		
LOS BANOS ABATTOIR	400	*		*			

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 4 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
OAKRIDGE SMOKEHOUSE	401	(*)	(*)	(*)		(*)	
OWENS COUNTRY SAUSAGE INC	403					(*)	
WILLISTON PACKING CO INC	405	(*)					
GREEN BAY DRESSED BEEF INC	410	(*)					
ALPINE PACKING CO	412	(*)	(*)				
THE LUNDY PACKING CO	413					(*)	
THE LUNDY PACKING CO	413A					(*)	
MURRAY PACKING CO INC	421	(*)					
E W KNEIP INC	422	(*)					
THE COLLINS PACKING CO	423					(*)	
KENOSHA BEEF INTERNATIONAL LTD	425	(*)					
FINEBERG PACKING CO	428	(*)	(*)	(*)	(*)		
SCHNEIDER PACKING CO	439	(*)					
GERBER PRODUCTS CO.	440	(*)					
OMAHA DRESSED BEEF CO INC	441	(*)					
OMAHA DRESSED BEEF CO INC	441A	(*)	(*)				
DEL CURTO MEAT CO	445	(*)	(*)	(*)	(*)	(*)	
THE DICILLO CORPORATION	448	(*)	(*)				
ECONOMY PACKING HOUSE	451	(*)	(*)				
MORRIS PIFKIN & SONS INC	460	(*)					
PIONEER BONELESS BEEF INC	461	(*)					
LANCASTER PACKING CO	462	(*)	(*)				
LITVAK PACKING CO	465	(*)					
BECWAR PACKING CO	467	(*)	(*)			(*)	
CORNHUSKER PACKING CO	468	(*)					
SIOUXLAND BEEF PROCESSING CO	476	(*)					
ARMOUR & CO	477	(*)					
GOTHAM PROVISION CO INC	481	(*)	(*)				
ST CROIX ABATTOIR	482	(*)	(*)	(*)	(*)	(*)	
ROBEL BEEF PACKERS INC	485	(*)					
EAST TENNESSEE PACKING CO	487	(*)				(*)	
BURING FOOD GROUP INC	488	(*)				(*)	
E W KNEIP INC	489	(*)					
WARD FOODS INC	490	(*)	(*)	(*)	(*)		
FAIRBANK FARMS INC	492	(*)	(*)			(*)	
QUALITY HOUSE PROVISIONS INC	494	(*)	(*)				
ROBERTS MEAT PACKING CORP	495					(*)	
VIENNA SAUSAGE MANUFACTURING CO	496	(*)					
BARTELL'S MEAT CO	497	(*)	(*)	(*)			
PELLA PACKING CO INC	498	(*)					
BANEY MEATS	501	(*)	(*)	(*)		(*)	
ALLENDALE BEEF CO	506	(*)					
STUTZMAN SLAUGHTERHOUSE	507	(*)	(*)	(*)	(*)	(*)	
SHEN VALLEY MEAT PACKERS INC	511	(*)				(*)	
SNIDER BROS INC	512	(*)	(*)				
CAPITOL PACKING CO	513	(*)					
DUFF ENTERPRISES INC	518	(*)			(*)		
PORK PACKERS INTERNATIONAL INC	520					(*)	
OKLAHOMA STATE UNIV MEAT LABORATORY	526	(*)	(*)	(*)		(*)	
RANCHO FEEDING CORPORATION	527	(*)	(*)			(*)	
ARMOUR & CO	528	(*)	(*)				
SMALLWOOD PACKING CO INC	529	(*)					
PEPPER PACKING CO	536	(*)					
OSCAR MAYER & CO INC	537A	(*)				(*)	
OSCAR MAYER & CO INC	537B					(*)	
OSCAR MAYER & CO INC	537C					(*)	
OSCAR MAYER & CO INC	537E					(*)	
MIDWEST PACKING CO INC	538	(*)					
GOEHRING MEAT PRODUCTS CORPORATION	548	(*)	(*)	(*)		(*)	
CASCADE MEAT PACKING CO	550	(*)		(*)	(*)	(*)	
SERV-U MEAT PACKING CO	551	(*)					
BLACK HILLS PACKING CO	554	(*)					
MID SOUTH PACKERS INC	557	(*)				(*)	
D & W PACKING CO	560	(*)	(*)			(*)	
UNITED DRESSED BEEF CO INC	561	(*)	(*)			(*)	
PACKERLAND PACKING CO INC	562	(*)					
PECK MEAT PACKING CORPORATION	567	(*)					
ELMER BENDER & SON INC	569				(*)	(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.		CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
PERRETTA PACKING CO INC	571		(*)				(*)	
ARMOUR & CO	579		(*)				(*)	
BEAVERCREEK MEAT CO INC	580		(*)				(*)	
MONARCH PACKING CO	581		(*)	(*)				
COFFEYVILLE PACKING CO INC	583		(*)					
FREDERICK & HERRUD INC	586						(*)	
DAWSON-BAKER PACKING CO INC	588		(*)					
COMO MEAT PACKING INC	593		(*)					
ELK GROVE MEAT CO	601		(*)					
SAN ANTONIO PACKING CO	602		(*)	(*)	(*)	(*)		
SAN ANTONIO PACKING CO	602A		(*)	(*)	(*)	(*)	(*)	
COPPER STATE PHOENIX MEAT CO	604		(*)	(*)				
WILSON FOODS CORPORATION	606						(*)	
WESTERN MEATS	608		(*)	(*)	(*)	(*)	(*)	
EASTERN OREGON MEAT CO INC	611		(*)	(*)	(*)		(*)	
PALAMERA BEEF CORP	613		(*)					
KUMMER MEAT CO INC	617		(*)	(*)	(*)		(*)	
DOSKOCIL SAUSAGE INC	623						(*)	
K'S COUNTRY MEAT PACKING CO	625		(*)		(*)		(*)	
BIG FOOT PACKING CO INC	627		(*)	(*)				
E A MILLER & SONS PACKING CO INC	628		(*)	(*)				
H H KEIM CO	630		(*)	(*)				
EBNER BROS PACKERS	633		(*)					
COQUILLE CUSTOM SLAUGHTERING	636		(*)		(*)	(*)	(*)	
CARTERET ABATTOIR INC	639			(*)	(*)	(*)	(*)	
FLANERY MEATS INC	643		(*)					
ERNST BUTCHERING SERVICE	645		(*)	(*)	(*)		(*)	
TRANSCONTINENT PACKING CO	646	E						(*)
BIRD PROVISION CO	647						(*)	
SCHLUDERBERG-KURDLE CO INC	649		(*)				(*)	
JOHN MORRELL & CO	650						(*)	
WILSON FOODS CORPORATION	655		(*)	(*)	(*)	(*)		
BAUMS BOLOGNA INC	657		(*)					
QUALITY MEAT PACKING CO	661		(*)					
COLORADO WEST PACKERS INC	662		(*)	(*)	(*)		(*)	
GLOBE PACKING CO	663		(*)					
WEBER FARMS INC	665						(*)	
CROWN PACKING CO	666						(*)	
FLANERY FOODS INC	667		(*)					
UNION PACKING CO INC	673		(*)					
S & S PACKING CO INC	674		(*)				(*)	
CAVINESS PACKING CO INC	675		(*)					
CALDWELL PACKING CO INC	683		(*)					
CENTRAL FALLS PROVISION CO.	686		(*)					
CALLAWAY PACKING CO	688		(*)					
PIERCE PACKING CO	691						(*)	
KANSAS STATE UNIV ANIMAL SCIENCE & INDUSTRY	694		(*)	(*)	(*)		(*)	
GULF PACKING CO	696		(*)					
TRIOLO BROTHERS	706						(*)	
CENTRAL NEBRASKA PACKING INC	713	E						(*)
DAVENPORT PACKING CO INC	716		(*)					
FARMLAND FOODS INC	717						(*)	
FARMLAND FOODS INC	717A						(*)	
FARMLAND FARMS INC	717CR						(*)	
A DARLINGTON STRODE	718						(*)	
DECKER & SON	727						(*)	
ROODE PACKING CO INC	729		(*)					
OHIO PACKING CO	736		(*)	(*)			(*)	
PARNELLS PACKING CO	738		(*)		(*)		(*)	
THE JACOB SCHLACHTER'S SONS CO	739		(*)	(*)				
THE O K PACKING CO	749		(*)	(*)				
JACK'S MEAT PACKING PLANT	754		(*)	(*)	(*)		(*)	
SEITZ FOODS INC	755A		(*)					
THE AMERICAN MEAT PACKING CORPORATION	760						(*)	
SCHAAKE PACKING CO INC	761		(*)					
KARLER PACKING CO	767		(*)					
SHERIDAN MEAT CO INC	768		(*)	(*)	(*)		(*)	
HANFORD MEAT PACKING CO	773		(*)	(*)				

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 6 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
BRISTOL FOODS INC	775	(*)					
CENTRAL PACKING CO	777	(*)				(*)	
CUDAHY CO	779	(*)	(*)	(*)		(*)	
BRYAN FOODS INC	780	(*)	(*)			(*)	
DIAMOND MEAT CO INC	783	(*)					
AURORA PACKING CO INC	788	(*)					
HATFIELD PACKING CO	791					(*)	
BAUM'S MEAT PACKING INC	792	(*)	(*)				
HURON DRESSED BEEF	798	(*)					
AMERICAN BEEF PACKERS INC	807	(*)					
THE G ERHARDT SONS INC	810	(*)	(*)				
S & R BEEF CO	811	(*)	(*)				
FLOYD VALLEY PACKING CO	812				(*)		
ROCHESTER INDEPENDENT PACKER INC	817	(*)					
J H ROUTH PACKING CO	818					(*)	
STRAUB & SMITH PACKING CORPORATION	820	(*)	(*)	(*)	(*)	(*)	
STERLING COLORADO BEEF CO	823	(*)					
FOREMOST PACKING CO	824	(*)				(*)	
SUPERIOR PACKING CO INC	825			(*)			
LOOKOUT MOUNTAIN PACKERS INC	826	(*)		(*)			
BERCHEMS MEAT CO	830	(*)					
DELTA MEAT PACKING CO INC	834	(*)	(*)				
LEE-JOHNSON INC	835	(*)				(*)	
VALLEYDALE PACKERS INC	840	(*)				(*)	
G BARTUSCH PACKING CO	843	(*)					
FLAVORLAND INDUSTRIES INC	857D	(*)					
JORDAN MEAT & LIVESTOCK CO INC	858	(*)	(*)	(*)	(*)	(*)	
CEDAR BREAKS BEEF CO	860	(*)	(*)	(*)		(*)	
FRESNO BEEF PROCESSORS INC	862	(*)	(*)				
TENNESSEE DRESSED BEEF CO	865	(*)					
HARDY & CO INC	869	(*)	(*)			(*)	
IMPERIAL BEST MEATS	870	(*)	(*)				
UTAH STATE UNIV ANIMAL DAIRY VET SCIENCE	874	(*)	(*)	(*)	(*)	(*)	
PAHLER PACKING CORPORATION	880	(*)					
SWANTON PACKING INC	883	(*)					
ALCO PACKING CO INC	885	(*)	(*)	(*)	(*)	(*)	
WALTER H LYONS INC	886	(*)				(*)	
HAMILTON PACKING CO	891	(*)	(*)	(*)		(*)	
SAMBOL PACKING CO	892	(*)					
TOBIN PACKING CO INC	893					(*)	
VERNON CALHOUN PACKING CO	897	(*)	(*)				
SIGMAN MEAT CO INC	901B					(*)	
PARTY PACKING CORPORATION	902	(*)					
CHIAPETTI PACKING CO	916				(*)		
B CONSTANTINO & SONS CO	918	(*)					
ALICE PACKING CO	921	(*)					
VALLEYDALE PACKERS INC	922	(*)	(*)			(*)	
SCHMALTZ MEATS	926	(*)				(*)	
TARPOFF PACKING CO	931	(*)					
PARSONS BEEF CO INC	932	(*)	(*)				
E B MANNING AND SON	934	(*)					
VOLZ PACKING CO	938	(*)					
GENTNER PACKING CO INC	941	(*)					
MEILMAN FOOD INDUSTRIES INC	946B	(*)					
M BRIZER & CO INC	948	(*)					
JOE DOCIORMAN & SON PACKING CO INC	949	(*)	(*)	(*)		(*)	
KENNEDYS SAUSAGE CO	950					(*)	
BOB EVANS FARMS INC	952	(*)				(*)	
GREATER OMAHA PACKING CO INC	960	(*)					
POTTER SAUSAGE PRODUCT INC	961	(*)				(*)	
VIRGINIA PACKING CO INC	963	(*)	(*)	(*)			
T L LAY PACKING CO	967	(*)				(*)	
MONFORT PACKING CO	969	(*)		(*)			
HAWAII MEAT CO LTD	970	(*)					
LONGHORN MEAT PACKERS INC	976	(*)					
BANNER BEEF CO	985	(*)					
J F O'NEILL PACKING CO	987	(*)					
KLARER OF KENTUCKY INC	995					(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
THE HOME PRIDE PROVISIONS INC	1029	(*)	(*)	(*)	(*)		
LANDY PACKING CO	1171	(*)					
A F MOYER & SON	1311	(*)	(*)				
MCCABE PACKING PLANT	1312	(*)	(*)				
BEEF NEBRASKA INC	1318	(*)					
SEVIER VALLEY MEATS INC	1420	(*)		(*)		(*)	
LA BRIER MEAT PROCESSING CO	1463	(*)	(*)	(*)	(*)	(*)	
ASSOCIATED MEAT PACKERS INC	1472	(*)	(*)	(*)		(*)	
OSMOND LOCKERS INC	1507	(*)				(*)	
OMAHA PORKERS INC	1526					(*)	
HENDERSON MEAT PROCESSORS	1527	(*)				(*)	
CABLE LINE MEATS INC	1589	(*)	(*)	(*)	(*)	(*)	
KAPOWSIN MEAT PACKERS	1628	(*)				(*)	
ABBYLAND PROCESSING INC	1633	(*)	(*)			(*)	
KAH & CO INC	1664	(*)	(*)	(*)		(*)	
DOUBLE J MEAT CO	1669	(*)	(*)	(*)		(*)	
HOUSE OF MEATS	1685	(*)				(*)	
KLH MEATS INC	1713	(*)				(*)	
JAMES SAUSAGE CO	1718					(*)	
DE KALB COUNTRY PACKING INC	1737			(*)	(*)	(*)	
HOLSTEIN PROCESSING INC	1738	(*)				(*)	
R-BEEF OF IOWA INC	1739	(*)				(*)	
RAWHIDE RANCH BAVARIAN MEAT	1741	(*)	(*)	(*)		(*)	
ROUTH PACKING CO INC	1746	(*)					
ROBERT L RUNTZ INC	1750	(*)	(*)				
B & B MEAT PACKING	1765	(*)				(*)	
LITTLE RIVER PACKING	1771	(*)	(*)	(*)	(*)	(*)	
PINE CITY FROZEN FOODS INC	1772	(*)	(*)	(*)	(*)	(*)	
GOLDEN WEST MEAT CO INC E	1796						(*)
B C DRESSED BEEF INC	1803	(*)					
IOWA PORK INDUSTRIES INC	1811					(*)	
LEE EDSON INC	1816	(*)	(*)				
ROCK DELL MEATS & PROCESSING	1894	(*)		(*)		(*)	
MINDEN BEEF CO	1914M	(*)					
SHOMIN MEAT PROCESSING	2018	(*)	(*)	(*)		(*)	
CROCKETT PACKING CO	2033	(*)	(*)				
IOWA STATE UNIVERSITY MEAT LABORATORY	2049	(*)	(*)	(*)		(*)	
MR BEEF PACKING	2061	(*)	(*)			(*)	
ABBEY PACKING CO	2080	(*)	(*)			(*)	
MIDWAY MEATS DIV COUNTRY PRIDE INC	2081		(*)			(*)	
WESTERN PACKING CO	2083	(*)	(*)	(*)		(*)	
ODOM SAUSAGE CO OF KENTUCKY INC	2094					(*)	
ALEWELS INC	2101	(*)	(*)	(*)	(*)	(*)	
HONEY BEEF HOUSE	2104	(*)					
P & H PACKING CO INC	2211	(*)	(*)				
HANDY PACKING CO INC	2215	(*)	(*)	(*)	(*)	(*)	
YOAKUM PACKING CO	2216	(*)				(*)	
CLARK PACKING CO	2219	(*)	(*)	(*)	(*)	(*)	
BURLISON PACKING CO	2224	(*)					
PACE PACKING CO	2228	(*)	(*)			(*)	
RIDLEY PACKING CO	2229	(*)	(*)				
SOUTH TEXAS PACKERS INC	2230	(*)					
LEONARD & HARRAL PACKING CO	2239	(*)	(*)	(*)	(*)		
HARRIS PACKING CO	2243	(*)		(*)		(*)	
BRYAN SAUSAGE CO INC	2249					(*)	
SS CHAROLAIS MEATS	2252	(*)					
LOVELAND PACKING CO INC	2259	(*)				(*)	
G & C PACKING CO	2262	(*)	(*)				
RIDLEY PACKING CO	2265	(*)	(*)			(*)	
L A FREY & SONS INC	2266A	(*)				(*)	
WRIGHT MEAT PACKING CO INC	2269	(*)	(*)			(*)	
CENTENO MEAT COMMISSARY	2271	(*)					
LAMESA MEAT CO	2272	(*)		(*)		(*)	
AMARILLO PACKING CO	2273	(*)					
HUSBAND BROTHERS PACKING CO	2284	(*)	(*)				
BEN GRANTHAM MEAT PACKERS	2290	(*)	(*)			(*)	
DANKWORTH PACKING CO INC	2296	(*)				(*)	
BARKER ENTERPRISES INC	2315	(*)	(*)	(*)		(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 8 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
FRUITLAND PACKING CO INC	2316	(*)	(*)			(*)	(*)
APACHE MEAT PROCESSING CO INC	2322	(*)	(*)			(*)	
BERRY PACKING INC	2325	(*)				(*)	
COMANCHE MEATS INC	2329	(*)	(*)			(*)	
MINCO MEAT CO	2330	(*)	(*)	(*)	(*)	(*)	
CORNETT PACKING CO	2333	(*)	(*)	(*)		(*)	
HOLDER PACKING CO INC	2339	(*)	(*)	(*)	(*)	(*)	
FLYING SPUR MEAT CO	2344	(*)				(*)	
LARON MEAT SERVICE	2356	(*)				(*)	
AMANA SOCIETY	2357	(*)					
WM J RAHE & SONS INC	2358	(*)			(*)	(*)	
RAWLINS COUNTY PROCESSING INC	2366	(*)				(*)	
THIES PACKING CO INC	2367	(*)				(*)	
GROTE MEAT CO	2369	(*)	(*)	(*)		(*)	
CANADIAN VALLEY MEAT CO	2370	(*)	(*)				
CLAYTON PACKING CO	2373		(*)				
SMIT & SON PACKING CO	2376	(*)				(*)	
SPENCER FOODS INC	2379	(*)					
ERNIE'S SUPERMARKETS CORP	2380	(*)	(*)			(*)	
PARTIN SAUSAGE CO	2385					(*)	
MARSHALL PACKING CO INC	2386	(*)				(*)	
CLINTON PACKING CO	2387					(*)	
MOTT PACKING CO	2394	(*)	(*)	(*)	(*)	(*)	
UNITED MEAT CO INC	2396	(*)					
PONY EXPRESS RANCH	2398	(*)	(*)	(*)		(*)	
P H CUSTOM MEATS INC	2401	(*)	(*)	(*)	(*)	(*)	
NACKER PACKING CO INC	2425	(*)					
HILLSHIRE FARM CO	2435					(*)	
RANCHLAND PACK INC	2439	(*)	(*)	(*)		(*)	
STRAUSS BROTHERS PACKING CO INC	2444			(*)			
H. RICHBERG & SON	2447	(*)	(*)				
JOHN R DAILY INC	2450	(*)	(*)			(*)	
CIMPL PACKING CO	2460	(*)					
LINK BROS INC	2472	(*)	(*)	(*)	(*)	(*)	
WENNING PACKING CO INC	2533	(*)					
NEW GLARUS FOODS INC	2585	(*)	(*)	(*)		(*)	
WEYHAUPT BROS PACKING CO	2594	(*)				(*)	
BARTLOW BROS INC	2595	(*)				(*)	
TEETERS PACKING CO	2598					(*)	
DUQUOIN PACKING CO	2599	(*)				(*)	
MCDONALD MEATS	2603	(*)	(*)			(*)	
FOUTCH PACKING CO	2604	(*)				(*)	
BUNDY BROTHERS MEATS PROCESSING	2611	(*)				(*)	
J W TREUTH & SON INC	2612	(*)					
MANASSAS ICE & FUEL CO INC	2621					(*)	
MANASSAS ICE & FUEL CO INC	2621A	(*)	(*)			(*)	
LOOMIS PACKING CO	2636	(*)				(*)	
CURTIS PACKING CO	2642	(*)	(*)	(*)		(*)	
H P BEALE & SONS INC	2682					(*)	
FARMBOY MEATS	2698	(*)				(*)	
YODERS INCORPORATED	2699	(*)		(*)		(*)	
V K MITMAN MEATS	2739	(*)	(*)			(*)	
ROD-CLIFF FARMS MEATS	2751	(*)	(*)	(*)	(*)	(*)	
WAGNER PROVISIONS CO INC	2770	(*)	(*)			(*)	
OVERLOOK MEAT PROCESSING INC	2790	(*)					
DOTTI-LOU MEATS	2794	(*)	(*)	(*)		(*)	
STOEVEN BROTHERS	2800	(*)	(*)	(*)			
TOBLER'S MEATS	2814	(*)	(*)	(*)	(*)	(*)	
BLUE MOUNTAIN MEATS	2825	(*)	(*)	(*)		(*)	
LEWIS & MCDERMOTT	2847	(*)					
BASIN PACKING CO	2850	(*)	(*)	(*)		(*)	
VISTA MEAT PACKING CO INC	2854	(*)	(*)	(*)			
TOP OF INDIANA BEEF CO INC	2906	(*)					
ARMBRUST MEATS	2912	(*)	(*)			(*)	
JENNIE-O FOODS INC	2916	(*)					
MADISON FOOD INC	2923					(*)	
MARYVILLE PACKING CO	2927	(*)	(*)	(*)	(*)	(*)	
PETTIS COUNTY LOCKER SYSTEM	2929	(*)	(*)	(*)	(*)	(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
RUNYON FROZEN FOOD SERVICE	2932	*					*
STAR PACKING CO INC	2934	*	*	*			
WINTER'S MEAT PROCESSING	2936	*	*	*	*	*	
WOODS LOCKER & ABATTOIR INC	2938	*			*	*	*
YONTZ PACKING CO	2939	*					*
WEST PLAINS PACKING CO	2944	*					*
WEST SLAUGHTER HOUSE	2945	*					*
P & H MEATS INC	2946	*	*	*	*	*	
PEMISCOT PACKING CO	2948	*					*
BUTT'S PACKING	2950	*	*	*		*	
CROUCH'S LOCKER & PROCESSING	2951	*	*	*	*	*	
NADLER'S MEATS INC	2956	*	*	*	*	*	
MAXWELL'S LOCKERS	2959	*				*	
WELLINGTON QUALITY MEATS INC	2960	*	*	*		*	
MAC DYE PACKING CO	2962	*	*		*	*	
BOLIVAR LOCKER PLANT	2964	*	*	*	*	*	
FRANCIS PACKING CO	2965	*					
SWISS PROCESSING PLANT	2969	*	*	*	*	*	
SLAGLE MEAT MARKET	2970	*	*	*	*	*	
MURPHY SLAUGHTERHOUSE	2972	*					*
SINGER LOCKER SERVICE	2975	*	*	*			*
DELALOYE & SONS MEAT PACKING INC	2977	*				*	*
RINEHART'S MEAT PROCESSING INC	2978	*	*	*			*
MIRABILE MEAT PROCESS	2982	*					
DAVIS MEAT PROCESSING	2984	*	*	*	*	*	
DIGGS PACKING CO	2985	*					*
OZARK PACKING CO	2986A	*	*	*	*	*	
HIGHLANDVILLE PACKING CO	2987	*	*	*	*	*	
GLEN'S CUSTOM BUTCHERING	2989	*	*	*	*	*	
FOUR QUARTER SLAUGHTERING	2990	*					*
HERROD PACKING CO INC	2991	*					
HOLDEN LOCKER PLANT	2993	*	*	*	*	*	
DIAMOND MEAT CO INC	2994	*	*	*			*
COUNTRY BUTCHER SHOP	2995	*			*	*	*
COUNTRY BUTCHER SHOP	2995A	*	*	*	*	*	
COUNTRY BUTCHER SHOP	2995B	*	*	*	*	*	
MILEY & LAWSON MEAT PROCESSING	2997	*	*				*
MISSOURI STATE PENITENTIARY FOR MEN	2998	*					*
GEHMAN'S QUALITY MEATS	4014	*	*	*	*	*	
ED'S CUSTOM MEATS	4021	*	*	*			*
DIETRICH'S COUNTRY MEATS	4022	*	*	*			*
HOFFER'S LIGONIER VALLEY PACKING	4025	*	*	*	*	*	
HOST ACRES FARMS QUALITY MEATS	4034	*	*	*			*
WAYNE H HOFFMAN & SON	4040	*	*	*			*
CLARENCE W CRAMER	4043	*	*				*
STAWICKI PROVISION	4045	*	*	*	*		
FARMLAND MEATS	4049	*	*	*			*
LEE PACKING CO	4055	*					*
THE DEVEREUX FOUNDATION FARM	4065	*	*	*			*
BOWMAN'S MEAT PROCESSING INC	4073	*	*				*
C & C PACKING CO INC E	4094						*
BIERLY'S MEAT MARKET	4095	*					
MIDVALE PACKING CO	4133	*	*				
TALONE PACKING CO	4152	*	*				
UPLAND PACKING CO	4165	*	*				
GREEN'S QUALITY MEAT SERVICE	4202	*	*	*	*	*	
TINY'S MEAT	4206	*					*
VALLEY MEATS INC	4213	*					*
HAWARDEN OF IOWA INC	4216	*					
SPRINGFIELD QUALITY BEEF INC	4220	*	*				
LIBERTY PACKING CORP E	4241						*
PULVERMACHER INC MEAT PROCESSING	4244	*	*	*			
JOE PAGLIUSO & SONS INC	4253	*	*				
SCHREIBER SON'S MARKET INC	4254	*					
POOK'S WHOLESALE MEATS INC	4263	*	*				
STATE UNIV OF NEW YORK AGRI & TECH COLLEGE	4266	*				*	*
JIM SIMON'S MEATS	4285	*	*				
DEL SONNO'S CUSTOM MEATS INC	4330	*	*				*

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 10 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
ALPHONSO CUOMO	4342	(*)	(*)			(*)	
S & J SLAUGHTERHOUSE	4346	(*)	(*)				
F K & SON INC	4353	(*)					
KLINCK BROS INC	4354	(*)					
DONALD H CLOY	4355	(*)	(*)				
BERNACKI BROS	4358	(*)	(*)				
SMITH PACKING CO	4371	(*)					
CARLSON BROTHERS MEATS INC	4372	(*)	(*)				
J M BOSTWICK AND SONS INC	4373	(*)					
ROBERT & RONALD VAN CAMP	4374	(*)	(*)	(*)			
SIPPERLY BROS INC	4388	(*)					
NESSLE BROTHERS MEATS	4389	(*)	(*)				
WALLKILL CORRECTIONAL FACILITY	4416	(*)					
KARL'S SLAUGHTERHOUSE	4418	(*)			(*)	(*)	
FIORENTINO BROS MEAT PROCESSORS	4419	(*)					
L & C MEATS CO	4421	(*)					
LEWIS A IVES	4422	(*)		(*)			
HERBERT M ZIFF INC	4424	(*)	(*)				
SHAPPEE'S MEAT PLANT	4426	(*)	(*)		(*)		
P BRENNAN INC	4429	(*)			(*)		
WILLIAM G MEAT PACKING CO	4431	(*)	(*)		(*)		
GREEN HAVEN CORRECTIONAL FACILITY	4463	(*)					
FRANK BROTHERS FARM INC	4464	(*)			(*)	(*)	
NOWER CUSTOM SLAUGHTERING	4468	(*)	(*)				
KAMERY'S WHOLESALE MEATS	4470	(*)	(*)	(*)	(*)	(*)	
FREDERICK BOND	4471	(*)	(*)				
PACKER'S WHOLESALE MEATS	4473	(*)					
GREENVILLE PACKING CORPORATION	4474	(*)					
LUTZ PACKERS INC	4475	(*)	(*)	(*)		(*)	
BRICCETTI'S BEDFORD MARKET	4476	(*)			(*)		
JOSEF MEILLER'S SLAUGHTERHOUSE INC	4477	(*)				(*)	
CROGHAN MEAT MARKET INC	4480	(*)					
F J LEWIS	4482	(*)	(*)	(*)			
HOKAN'S SLAUGHTERHOUSE	4483	(*)	(*)				
STEINER PACKING CO INC	4486	(*)	(*)	(*)	(*)	(*)	
VICTORIA POLYNIAK	4488	(*)	(*)			(*)	
STEIGER'S SLAUGHTER HOUSE	4489	(*)	(*)	(*)		(*)	
ORLEANS MEAT PROCESSING CO	4490	(*)	(*)	(*)	(*)	(*)	
PAT ROBUSTON INC	4491	(*)					
DILLION'S SLAUGHTER HOUSE	4492	(*)					
TRI-TOWN CORPORATION	4499	(*)	(*)	(*)			
RADEL'S MEAT MARKET	4517	(*)				(*)	
ROTTERDAM PACKING CO INC	4526					(*)	
CUDLIN'S MARKET	4528	(*)	(*)	(*)			
JOHN BRITT	4530	(*)					
STATE UNIV OF NEW YORK AT ALFRED AGRI & TECH	4531	(*)	(*)	(*)			
OWASCO MEAT CO	4532	(*)				(*)	
MAPLE GROVE FARMS	4533	(*)	(*)	(*)		(*)	
GORHAM PACKING CORPORATION	4534	(*)	(*)				
TEAR'S MARKET	4535	(*)	(*)	(*)	(*)	(*)	
SOUTH DAYTON MEAT MARKET	4540	(*)	(*)	(*)		(*)	
MANWARING'S CUSTOM PROCESSING	4541	(*)	(*)		(*)	(*)	
LAZY FARMS INC	4542	(*)	(*)				
THE HILLSDALE PACKING CO INC	4546	(*)					
GREENBRIER FOODS INC	4593	(*)			(*)		
EMERICK'S MEAT & PACKING	4607	(*)	(*)			(*)	
MULLEN'S SLAUGHTERHOUSE	4623	(*)	(*)				
FORD BROS WHOLESALE MEATS INC	4625	(*)	(*)				
MILFORD MEAT PACKER	4633	(*)	(*)			(*)	
WARSAW PACKING CO	4638	(*)					
RITE WAY MEAT PROCESSING INC	4662	(*)	(*)	(*)		(*)	
STRANDBURG'S WHOLESALE MEATS	4666	(*)	(*)		(*)	(*)	
SUFFOLK COUNTY FARM COOP	4675	(*)				(*)	
KENNEDY MEAT MARKET	4677	(*)	(*)				
HOBART'S REFRIGERATED SERVICE	4679	(*)	(*)		(*)		
POTTER PACKING CO INC	4689	(*)			(*)		
LILLIES WHOLESALE MEATS	4697	(*)	(*)				
FRANK DEMARTINO & SON & SONS	4707	(*)			(*)		

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
SOUTHINGTON PACKING CO	4708	(*)	(*)	(*)	(*)	(*)	
DAN BROOK PACKING CO	4709	(*)	(*)		(*)	(*)	
MAURICE'S COUNTRY MEAT MARKET	4714	(*)	(*)	(*)	(*)		
LECCE PACKING CO	4715	(*)	(*)	(*)	(*)	(*)	
E & J FARMS	4716	(*)	(*)	(*)	(*)	(*)	
UNIV OF CONNECTICUT MEAT LABORATORY	4717	(*)	(*)	(*)		(*)	
DON J LYNCH PACKING HOUSE	4727	(*)	(*)	(*)	(*)		
MATTICE'S SLAUGHTERHOUSE	4728	(*)	(*)	(*)	(*)		
ESSEX AGRICULTURAL & TECHNICAL INSTITUTE	4751	(*)	(*)	(*)		(*)	
WARRINGTON FARM	4752	(*)	(*)			(*)	
K & R MEAT SHOP	4763	(*)				(*)	
MARSTELLER FARM MEATS	4776	(*)	(*)				
ROBERT E RILEY	4788	(*)	(*)				
RUSSELL MEAT PACKING INC	4789	(*)	(*)			(*)	
ROSE VALLEY FARM	4791	(*)	(*)	(*)		(*)	
CLOVIS PACKING CO INC	4802	(*)	(*)	(*)	(*)	(*)	
JOEY PAUL DBA MOUNTAIN PROCESSORS INC	4804	(*)	(*)	(*)		(*)	
EASTERN OKLAHOMA STATE COLLEGE	4808	(*)		(*)		(*)	
CIRCLE W SLAUGHTERHOUSE	4815	(*)	(*)				
E GREAT WESTERN MEAT CO	4816						(*)
CATTLEMAN'S WHOLESALE BEEF & PORK OUTLET	4819	(*)	(*)			(*)	
CALIFORNIA STATE POLY SAN LUIS OBISPO	4869	(*)		(*)		(*)	
CALIFORNIA STATE POLYTECHNIC UNIV POMONA	4902	(*)	(*)	(*)		(*)	
KLAPP'S COUNTRY MARKET & PACKING HOUSE	4903	(*)	(*)	(*)	(*)	(*)	
RICKERT MEAT CO	4982	(*)	(*)	(*)		(*)	
FORT PLAIN PACKING CO INC	5074		(*)				
SELECTED MEAT PACKERS INC	5109	(*)				(*)	
DOUBLE A MEAT PACKING CO	5162	(*)	(*)	(*)	(*)	(*)	
ANTHONY PARRILLO INC	5193	(*)	(*)	(*)	(*)	(*)	
RALPH PACKING CO INC	5228	(*)	(*)				
JOSEPH LATELLA & SONS	5297		(*)	(*)	(*)	(*)	
JOHNSTON DRESSED BEEF & VEAL CO INC	5300	(*)	(*)	(*)	(*)		
GEO WALDENMAIER & SONS	5327				(*)		
A ARENA & SONS INC	5346	(*)			(*)		
LAKEVIEW PACKING CO	5412	(*)	(*)	(*)		(*)	
S MARESCA & SONS INC	5416	(*)			(*)	(*)	
SALEM PACKING CO	5425	(*)	(*)	(*)		(*)	
BRINGHURST BROS INC	5426	(*)	(*)	(*)	(*)	(*)	
VINELAND DRESSED BEEF INC	5430	(*)	(*)	(*)			
WHIPPANY MEAT PACKING INC	5437	(*)				(*)	
KLEEMEYER & MERKEL INC	5439	(*)					
MUENCH MEATS & SONS CO	5442	(*)					
SIEGEL BROS INC	5457	(*)	(*)	(*)			
BUTTER LANE FARM	5462	(*)	(*)	(*)		(*)	
MARLBORO PSYCHIATRIC HOSPITAL	5464	(*)				(*)	
PERSON'S PROCESSING	5469	(*)			(*)	(*)	
RUSSO PACKING CO	5471	(*)	(*)	(*)	(*)		
RUSSO PACKING CO	5471A	(*)					
WINCHESTER PACKING CO INC	5500	(*)				(*)	
PAULLINA BEEF PROCESSORS INC	5501	(*)					
MORELAND & MAY PROCESSING PLANT	5507	(*)	(*)			(*)	
AMEND PACKING CO	5509	(*)					
GIBBON PACKING CO	5511	(*)					
HERB'S LOCKER & SLAUGHTER INC	5514	(*)					
CENTRAL FOODS INC	5519	(*)	(*)			(*)	
HEWLETT WHOLESALE MEATS	5524	(*)	(*)				
CASE MEAT PROCESSING	5530	(*)	(*)			(*)	
SIOUX-PREME PACKING CO	5537					(*)	
JACK POLEN PACKING CO	5548	(*)					
IOLA MEAT PROCESSORS INC	5555	(*)					
THE FANESTIL PACKING CO INC	5562	(*)					
HAVILAND BROS PACKING CO INC	5565	(*)	(*)	(*)		(*)	
TAMA MEAT PACKING CORPORATION	5569	(*)					
STANKO PACKING CO	5572	(*)					
BUTCHERS INC	5575	(*)	(*)	(*)	(*)	(*)	
GRABILL COUNTRY MEATS #1 INC	5593	(*)		(*)	(*)		
WIMMER'S MEAT PRODUCTS INC	5601	(*)	(*)	(*)	(*)	(*)	
THE MEAT CENTER INC	5604	(*)	(*)	(*)		(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 12 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
JACK'S PROCESSING	5608	*		*		*	
JOHNSON'S FROZEN FOODS	5612	*	*	*	*	*	
JIMMY DEAN MEAT CO INC	5614					*	
DE LUCA PACKING CO INC	5621	*	*	*		*	
ALBION LOCKERS	5622	*		*	*	*	
ALEXANDRIA PACKING CO	5623	*	*	*		*	
GOERTZEN'S PROCESSING	5630	*	*	*	*	*	
CARLSON'S INC	5632	*	*	*	*	*	
OSAKIS MEAT & PROCESSING	5633	*	*	*	*	*	
DOTY PACKING CO INC	5634	*		*		*	
GRUNKEMEYER MEATS	5635	*				*	
OTTE PACKING	5638	*	*	*		*	
E & E MEATS PROCESSING	5639	*		*		*	
F & S SAUSAGE CO INC	5640	*		*	*	*	
JOHNSON STEAK MASTER	5641	*		*	*	*	
DESHLER ZERO PANTRY	5645	*					
PETERSON'S LOCKERS INC	5647	*		*		*	
TATUM'S PROCESSING PLANT	5649	*	*	*		*	
CUSTOM PACK INC	5650	*	*	*			
ANDERSON'S LOCKER & PACKING CO INC	5651	*				*	
CITY MEAT MARKET INC	5652	*	*	*		*	
UERLING LOCKER	5653	*				*	
BELINDE'S LOCKER PLANT	5654	*		*		*	
EPLER MERCANTILE CO	5655	*		*	*	*	
KIMBALL LOCKER PLANT	5656	*		*		*	
TRAUTMAN'S MEAT CENTER INC	5657	*		*	*	*	
UNIV OF NEBRASKA LOEFFEL MEAT LABORATORY	5658	*		*		*	
BUTLER'S BEEF ACRES	5660	*	*	*	*	*	
ROMAN PACKING CO INC	5662	*	*	*	*	*	
PETERSBURG LOCKER INC	5668	*	*	*		*	
YOST PACK INC	5672	*	*	*	*	*	
HOLLSTEIN PACKING CO	5673	*	*	*		*	
HASTINGS MEAT SUPPLY INC	5674	*				*	
KREIMER'S STORE	5681	*	*	*		*	
TECUMSEH LOCKER	5682	*	*	*	*	*	
VALENTINE LOCKER	5683	*	*	*		*	
WAKEFIELD LOCKER SERVICE	5685	*					
WAUSA LOCKERS	5686	*	*	*		*	
IOWA PORK INDUSTRIES INC	5689	*				*	
HAROLD'S GROCERY & LOCKER	5693	*					
BIRDGE & ZIMMERMAN INC	5700	*	*	*	*	*	
HAVLIK'S LOCKER PLANT	5729	*		*		*	
BANFIELD OF TULSA INC	5763	*	*	*		*	
SHERMAN CUSTOM SLAUGHTERING	5764	*				*	
ALEWEL'S INC	5766	*		*		*	
LEROY'S SLAUGHTER	5767	*		*		*	
V-B MEATS INC	5769	*	*	*	*	*	
PERRYVILLE PACKING CO	5770	*	*	*	*	*	
HASTY PACKING CO	5772	*	*	*		*	
KAHRE & SONS SLAUGHTERING & PROCESSING	5775	*	*	*	*	*	
FRIGID FOOD SERVICE	5776	*		*	*	*	
UNIVERSITY OF MISSOURI FS & N DEPT	5777	*		*		*	
SPRAGUE SLAUGHTER HOUSE	5779	*	*	*		*	
EDENS DUTCH PACKING CO	5781	*	*	*	*	*	
THE DEEP-FREEZE INC	5782	*		*	*	*	
LUMLEY LOCKER	5788	*		*		*	
SEATON MEAT CO	5791	*		*	*	*	
PARIS LOCKER & ABATTOIR	5795	*		*			
DALE'S PACKING CO	5797	*	*				
NORVS MEAT PRODUCTS	5798	*	*	*	*	*	
MCGEE PACKING CO	5801	*		*		*	
ST LOUIS MEATS INC	5807	*				*	
WARSAW MEAT PROCESSING CO INC	5812	*		*	*	*	
SCHLESWIG SAUSAGE INC	5813	*				*	
NORBORNE LOCKER SERVICE	5820	*	*			*	
HOTT'S FOOD LOCKERS ABATTOIR	5821	*				*	
SIKESTON SLAUGHTERHOUSE	5824	*	*	*	*		
HUGHESVILLE SLAUGHTER PLANT	5826	*	*	*	*	*	

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
POOS BROS INC SLAUGHTER HOUSE	5827	*	*	*		*	
LEET'S LOCKER PLANT	5835	*				*	
GIBSON PACKING CO	5843	*	*			*	
C & C MEATS	5848	*				*	
SHANNON-DAKOTA FOODS INC	5857	*				*	
NIBLOCK PORK PRODUCTS	5900					*	
CENTAUR FOODS INC	5907	*	*			*	
BORDEN PACKING	5909					*	
JOSEPH CHIU	5910	*	*				
DE VRIES MEAT PACKING	5911	*	*	*	*	*	
JOHN MARCACCI	5913	*	*	*	*	*	
BRISTOL BEEF	5998	*	*	*	*	*	
ARIZONA BEEF CO	6001	*	*				
W C PARKE & SONS CO	6003	*	*				
UNIVERSITY OF NEVADA ANIMAL SCIENCE DIVISION	6004	*	*	*		*	
HOHENER MEAT CO INC	6011	*	*			*	
UNIVERSITY OF CALIF-DEPT OF ANIMAL SCIENCE	6012	*	*	*		*	
SONOMA VALLEY MEAT CO	6016	*	*	*	*	*	
RIISE MEAT PACKING CO	6017	*	*	*	*	*	
MOUNT VERNON MEAT CO INC	6039	*	*				
PASCO MEAT PACKERS INC	6040	*	*			*	
WEBER INC	6041	*	*	*	*	*	
MCRAE PACK INC	6042	*	*	*		*	
FLORENCE PACKING CO	E 6043						*
DAVIS MEAT CO	6044	*	*			*	
AVILA MEAT CO	6046	*	*				
SATICOY MEAT PACKING CO	6055	*	*	*		*	
SCHENK PACKING CO	6056	*	*	*		*	
TULARE MEAT CO	6063	*	*				
REDWOOD MEAT CO	6066	*	*	*	*	*	
GRANDVIEW PACKING CO	6083	*	*	*		*	
ARNOPOLE MEAT CO	6084	*	*			*	
G & G MEATS	6099	*	*				
KRATZIG MEAT CO	6110	*	*	*	*	*	
ARNOLD MEAT CO	6113	*	*	*		*	
MID-CAVE MEAT PACKING CO	6114	*	*			*	
CEDAR PACKING CO	6118	*	*	*	*	*	
T P PACKING CO	6173	*	*				
LEWIS MEATS	6175	*	*	*		*	
R & R LOCKER PLANT	6228	*		*		*	
TRI MILLER PACK	6230	*	*	*		*	
THE MEAT HOUSE	6237	*	*	*	*	*	
EVANS MEAT CO	6243	*					
VALLEY MEAT CO	6269	*	*	*	*	*	
MC CARY MEATS	6270	*	*	*	*	*	
STILLWATER PACKING CO	6271	*		*		*	
BIG SKY MARKET	6277	*		*		*	
J T TRELEGAN CO	6343				*		
E L BLOOD & SON	6354	*	*	*	*	*	
BRITO'S MEATS & PROVISIONS	6359	*	*	*	*	*	
ISRAEL SHEINHIT PACKING CO	6369	*	*	*	*		
JOHN SZALA	6376	*	*				
GOLDEN DALE RANCH MEAT CO	6411	*	*	*		*	
RICE MEAT PACKING CO	6413	*	*	*	*	*	
GALBREATH PACKING CO	6420	*	*	*	*	*	
WHOLESALE MEATS	6421	*	*	*	*		
MC KLENLEY MEAT PACKING CO	6423	*	*				
FOSS BROTHERS	6434	*	*	*	*	*	
WILDER PACKING PLANT	6445	*	*	*	*	*	
BIG COUNTRY MEAT	6446	*	*	*	*	*	
CREAGHE PACKING CO	6450	*		*	*	*	
WINDSOR PACKING CO	6452	*	*	*	*	*	
RIFLE PACKING PLANT	6453	*	*	*			
ELIZABETH LOCKER PLANT INC	6454	*	*	*	*	*	
SCANGA MEAT CO	6460	*	*	*		*	
T W PACKING	6462	*	*	*	*	*	
BRUSH PACKING PLANT	6463	*	*	*		*	
NELSON'S DRESSED MEATS	6470	*	*	*		*	

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 14 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
YORK'S MEAT	6482	(*)	(*)	(*)	(*)	(*)	
MORI WHOLESALE MEATS	6485	(*)	(*)	(*)	(*)	(*)	
K PACK MEAT CO	6487	(*)	(*)	(*)	(*)	(*)	
CARSON VALLEY MEAT CO	6491	(*)	(*)	(*)	(*)	(*)	
HOTCHKISS ICE & COLD STORAGE CO	6493	(*)	(*)	(*)	(*)	(*)	
QUALITY PACKING INC	6494	(*)	(*)	(*)	(*)	(*)	
HIGH QUALITY PACK	6495	(*)				(*)	
GREEN HILL INC	6513	(*)				(*)	
ELM HILL MEATS INC	6515	(*)				(*)	
FLORIDA VEAL PROCESSORS INC	6518	(*)	(*)				
GUARD HILL MEATS INC	6526	(*)	(*)	(*)	(*)	(*)	
MORRISTOWN PROVISION CO	6535	(*)	(*)			(*)	
GUNNOE SAUSAGE CO INC	6541					(*)	
ODOM SAUSAGE CO INC	6544					(*)	
K-M CO	6545	(*)					
SUFFOLK PACKING CO INC	6546	(*)	(*)	(*)			
MARTINS ABATTOIR & WHOLESALE MEATS	6547	(*)	(*)			(*)	
DAVIS COUNTRY SAUSAGE	6549	(*)	(*)				
NORMAN'S PACKING PLANT	6552	(*)	(*)			(*)	
THE WELLS CO INC	6554	(*)	(*)	(*)	(*)	(*)	
FAYETTE PACKING CO	6555	(*)	(*)	(*)	(*)	(*)	
GILBERT'S SLAUGHTER HOUSE	6556	(*)	(*)		(*)	(*)	
PENN HAVEN MEATS INC	6559	(*)				(*)	
HAYES PROCESSING PLANT	6560	(*)				(*)	
LINDSEY'S SLAUGHTER HOUSE	6561		(*)			(*)	
SAVANNAH PROCESSING & LOCKER	6562	(*)				(*)	
BOLIVAR PACKING CO	6563	(*)	(*)			(*)	
BROWN'S MEAT PLANT	6570	(*)				(*)	
BALTZ BROS PACKING CO INC	6573	(*)				(*)	
EDWARDS SAUSAGE CO INC	6579					(*)	
GLASGOW MARKET	6580	(*)		(*)		(*)	
M & G SLAUGHTER HOUSE	6582		(*)			(*)	
ROD'S PROCESSING CO	6584	(*)				(*)	
ELMORE COUNTY QUICK FREEZE	6585	(*)				(*)	
BROWN PACKING CO INC	6587	(*)	(*)				
RANDOLPH PACKING CO INC	6590	(*)	(*)	(*)	(*)	(*)	
LEDFORDS LIVESTOCK FARM SLAUGHTER PLANT	6591A	(*)	(*)	(*)		(*)	
WHITE PACKING CO	6595	(*)	(*)			(*)	
GROGAN MEAT CO	6598	(*)				(*)	
GREENBACK FOOD SPECIALTY	6601	(*)	(*)	(*)		(*)	
JAKES BROS SAUSAGE CO	6610					(*)	
MEEKS SLAUGHTER HOUSE	6612	(*)		(*)	(*)	(*)	
TENNESSEE VALLEY PACKING CO	6613					(*)	
PARKS HARRIS CO	6618		(*)	(*)	(*)	(*)	
DEAN SAUSAGE CO INC	6621					(*)	
MORRISSEY MEATS & PROVISIONS	6628	(*)	(*)	(*)	(*)		
BOONEVILLE PACKING CO	6635	(*)				(*)	
PETE'S MARKET	6636	(*)				(*)	
TUCKER'S SAUSAGE	6643					(*)	
SPRING CREEK INC	6644		(*)			(*)	
MEAT PROCESSING INC	6648	(*)	(*)			(*)	
BRASELTON PACKING	6652	(*)	(*)		(*)	(*)	
MACELO DE HUMACAO	6676	(*)	(*)	(*)	(*)	(*)	
ASOCIACION SUPLIDORES DE CARNES DEL OESTE	6677	(*)	(*)	(*)	(*)	(*)	
YAUCO MUNICIPAL GOVERNMENT	6678	(*)	(*)	(*)	(*)	(*)	
MANATI MUNICIPALITY	6679	(*)	(*)				
MUNICIPAL SLAUGHTER HOUSE	6680	(*)	(*)			(*)	
MUNICIPALITY OF VIEQUES	6681	(*)					
MUNICIPALITY OF ARECIBO	6682	(*)				(*)	
AGROPECUARIA DEL SUR INC	6684	(*)	(*)		(*)	(*)	
NAGUABO REGIONAL ABATTOIR	6686	(*)	(*)	(*)	(*)	(*)	
SAN SEBASTIAN ABATTOIR	6687	(*)	(*)	(*)	(*)	(*)	
BUCKLEY MEAT PACKERS INC	6688	(*)	(*)			(*)	
MACELO MUNICIPAL DE PONCE	6689	(*)	(*)	(*)	(*)	(*)	
MACELO DE COROZAL	6690	(*)	(*)			(*)	
LARES MUNICIPAL SLAUGHTER HOUSE	6696	(*)	(*)	(*)	(*)	(*)	
PELL CITY MEAT PROCESSING	6728	(*)	(*)			(*)	
PROVIMI DE PUERTO RICO INC	6729		(*)				

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.		CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
DICKSON COUNTY MEATS INC	6750		(*)		(*)		(*)	
STAR MEAT CO	6760						(*)	
WALTER PACKING INC	6766		(*)				(*)	
CALIHAN & CO	6775		(*)					
HELMS MEATS INC	6777		(*)	(*)	(*)		(*)	
THE ROSE ABATTOIR CO	6780		(*)	(*)	(*)			
BOB EVANS FARMS INC	6785						(*)	
BERGMAN MEAT PACKING CO	6788		(*)	(*)			(*)	
ILLINI BEEF PACKERS INC	6792		(*)					
BOB EVANS FARMS INC	6807						(*)	
UTICA PACKING CO	6832						(*)	
SIDNEY MEAT CO	6843		(*)				(*)	
COLUMBIA PACKING CO INC	6853		(*)		(*)			
MARBURGER PACKING CO	6863		(*)					
LILY PACKING INC	6866		(*)					
HITCH PACKING CO INC	6887		(*)					
MILLER PROCESSING CO INC	6889		(*)	(*)	(*)	(*)	(*)	
COUNTRY PRIDE INC	6893	E						(*)
ROPAK INC	6901		(*)				(*)	
MEATXCORP	6920	E						(*)
TRI STATE FOODS INC	6957		(*)					
THE CUYAHOGA MEAT CO	6963		(*)	(*)	(*)	(*)	(*)	
ABE MAY PACKING CO	6965		(*)	(*)	(*)		(*)	
SELECTED MEATS	6979		(*)	(*)				
WILLIAM P FROEHLICK	6982		(*)	(*)	(*)	(*)		
JUDSON PACK INC	6989		(*)	(*)	(*)		(*)	
PURDUE UNIVERSITY MEAT SCIENCE LABORATORY	6992		(*)		(*)		(*)	
SCHWARTZMAN PACKING CO	7003		(*)		(*)			
DEMING PACKING CO INC	7005		(*)				(*)	
CATTLEMEN'S MEAT CO	7007		(*)	(*)	(*)	(*)	(*)	
SURRATT PACKING CO INC	7009		(*)	(*)	(*)	(*)	(*)	
MUSKOGEE PACKING CO INC	7015		(*)	(*)	(*)	(*)		
HATCH PACKING CO INC	7021		(*)	(*)	(*)	(*)	(*)	
SIXTY-SIX PACKING CO	7023		(*)		(*)		(*)	
WESTERN MEAT PACKERS INC	7028		(*)				(*)	
KACHINA PACKING CO	7040		(*)		(*)	(*)	(*)	
BELTEX CORPORATION	7041	E						(*)
PROGRESSIVE BEEFPACKERS INC	7048		(*)	(*)	(*)	(*)	(*)	
AL'S MEAT PACKERS	7049		(*)	(*)	(*)	(*)	(*)	
DALHART PROCESSING PLANT	7050		(*)	(*)	(*)	(*)	(*)	
HARRYMAN'S MEAT PROCESSING	7052		(*)	(*)			(*)	
ROCKING V BEEF INC	7054		(*)	(*)	(*)	(*)	(*)	
BROWN'S MEAT LOCKER	7055		(*)		(*)	(*)	(*)	
DONOHO BONELESS BEEF CO	7056		(*)	(*)	(*)	(*)	(*)	
BROWN PACKING CO INC	7064		(*)				(*)	
RUNYAN PACKING CO	7065		(*)	(*)	(*)	(*)	(*)	
J & B SAUSAGE CO INC	7066		(*)	(*)			(*)	
P & S PACKING CO	7074		(*)	(*)			(*)	
TANKERSLEY BROS PACKING CO	7075		(*)	(*)	(*)	(*)	(*)	
COMMUNITY ABATTOIR INC	7075A		(*)	(*)	(*)	(*)	(*)	
HUGHSON MEAT CO INC	7086		(*)	(*)	(*)	(*)	(*)	
CLENNIN MEATS	7090		(*)	(*)	(*)	(*)	(*)	
ATHENS PROCESSING PLANT	7094		(*)	(*)			(*)	
TURVEY INC	7097		(*)					
E-TEX PACKING CO	7122		(*)	(*)				
FELICIANA MEAT SUPPLY	7128		(*)	(*)	(*)	(*)	(*)	
WINDTHORST FINE MEATS	7130		(*)		(*)	(*)	(*)	
COLORADO PACKING CO INC	7133		(*)	(*)			(*)	
VALLEY MEAT SUPPLY & SERVICES	7138		(*)	(*)	(*)	(*)	(*)	
WICKHAM PACKING CO INC	7139		(*)	(*)			(*)	
B & B PACKING CO	7146		(*)	(*)	(*)	(*)	(*)	
OSBURN PACKING CO	7150		(*)	(*)			(*)	
DON MCDOWELL MEAT PACKING CO	7155		(*)				(*)	
SOUTHERN MEAT PACKERS INC	7157						(*)	
GREER'S INC	7159						(*)	
BOOKER CUSTOM PACKING CO	7162		(*)	(*)		(*)	(*)	
BAUER & SON PACKING CO	7178		(*)	(*)				
FARMINGTON MEAT PROCESSORS SLAUGHTERHOUSE	7183A		(*)	(*)	(*)	(*)	(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 16 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
ALL-STATE PACKING CO	7193	(*)	(*)			(*)	
SHALLOUP PACKING CO INC	7201	(*)	(*)	(*)		(*)	
SINGLETREE FARMS INC	7203	(*)				(*)	
CONCHO PACKING CO	7209	(*)	(*)	(*)	(*)	(*)	
COLUMBIA PACKING	7237	(*)	(*)			(*)	
CORSICANA MEAT PACKING CO INC	7239		(*)				
AMERICAN PACKING CO INC	7248	(*)	(*)	(*)	(*)	(*)	
AMARILLO BEEF PROCESSORS INC	7254	(*)					
H & H PRODUCTS CO INC	7259	(*)	(*)	(*)		(*)	
FORREST MEAT PROCESSING	7270	(*)		(*)		(*)	
HOBSONS MEATS SLAUGHTER & PROCESSING	7274	(*)		(*)	(*)	(*)	
PALACE MEAT PACKING	7275	(*)				(*)	
PALO DURO MEAT PROCESSING INC	7282	(*)					
BEEVILLE PACKING CO	7283	(*)					
MONTGOMERY PACKING CO INC	7286	(*)	(*)	(*)	(*)	(*)	
THOMPSON PACKERS INC	7287	(*)	(*)				
PEOPLES BANK	7291	(*)				(*)	
CIRCLE A PACKING CO	7298	(*)				(*)	
KENTUCKY SAUSAGE CO INC	7300	(*)				(*)	
DUFFY BONELESS BEEF CO	7305	(*)	(*)				
METZGER PACKING CO INC	7306	(*)	(*)			(*)	
BUTLER-MIMS FROZEN FOODS	7314	(*)				(*)	
ENTERPRISE MEAT CO INC	7319	(*)	(*)				
CHEROKEE PACKING CO	7323	(*)	(*)			(*)	
OLE SALEM PACKING CO	7326	(*)				(*)	
MC BAR ACRES	7339					(*)	
JEFFERSON MEAT PROCESSING	7343	(*)	(*)			(*)	
WHITSON MEAT PROCESSORS	7345	(*)	(*)			(*)	
JOHN DOWDY SLAUGHTER HOUSE	7369	(*)		(*)	(*)	(*)	
J-F-J PROCESSORS	7379	(*)	(*)		(*)	(*)	
ST THOMAS ABATTOIR	7385	(*)	(*)	(*)	(*)	(*)	
SAN GERMAN SLAUGHTERHOUSE	7386	(*)	(*)	(*)	(*)	(*)	
MUNICIPIO DE CABO ROJO	7387	(*)	(*)	(*)	(*)	(*)	
QUEBRADILLAS MUNICIPAL SLAUGHTER HOUSE	7388	(*)	(*)	(*)	(*)	(*)	
MACELO DE AIBONITO	7390	(*)	(*)		(*)	(*)	
COLEMAN SAUSAGE CO	7401					(*)	
HENRY W STAPF INC	7402			(*)			
HARRISONBURG WHOLESALE MEAT CO	7420	(*)	(*)	(*)	(*)	(*)	
HAMPTON MEAT PROCESSING	7429	(*)	(*)	(*)		(*)	
SHARON FROZEN FOOD LOCKER	7430	(*)	(*)	(*)		(*)	
PHILLIPS MEAT PROCESSING CO	7433	(*)				(*)	
DELTA PACKING CO INC	7435	(*)					
DINNER BELL MEAT PRODUCTS	7440	(*)	(*)	(*)		(*)	
BLUE RIDGE BEEF PLANT INC	7445	(*)					
BLUE RIDGE BEEF PLANT INC	7445A	(*)					
WILLIAMS SAUSAGE CO	7455					(*)	
TITANGEL ABATTOIR	7462	(*)	(*)		(*)	(*)	
F B PURNELL SAUSAGE CO INC	7464	(*)			(*)	(*)	
DIAMOND MEAT CO INC	7465	(*)		(*)		(*)	
HYDER'S SLAUGHTERING	7466	(*)		(*)		(*)	
FIELD PACKING CO	7467	(*)					
H & R CUSTOM SLAUGHTERING	7472	(*)				(*)	
BRUNDIDGE SAUSAGE CO	7475					(*)	
TENNESSEE PACKERS & PROCESSORS	7482	(*)	(*)				
DANVILLE MEAT PRODUCTS CO	7486	(*)				(*)	
DUGGARD'S MEAT PROCESSING INC	7493	(*)	(*)		(*)	(*)	
HOERTER & SON	7497		(*)				
T M LANDIS INC	7517	(*)	(*)	(*)			
DEALAMAN ENTERPRISES INC	7562	(*)	(*)	(*)		(*)	
GARTNER-HARF CO	7576	(*)					
DAKOTA PACKING CO	7600	(*)		(*)		(*)	
ABERCROMBIE MEAT PROCESSING CO	7601	(*)	(*)	(*)		(*)	
M & W BEEF PACKERS	7602	(*)	(*)				
MISSOURI VALLEY MEAT CO	7604	(*)	(*)	(*)		(*)	
CEDAR RIDGE MEAT SERVICE	7607	(*)		(*)		(*)	
HOPE LOCKER PLANT	7609	(*)	(*)	(*)		(*)	
CASSELTON COLD STORAGE	7611	(*)	(*)	(*)	(*)	(*)	
GREAT BEND LOCKERS	7612	(*)		(*)		(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 17 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
FAIRMOUNT LOCKERS	7615	(*)	(*)	(*)	(*)	(*)	
SHONEYS BIG BOY ENTERPRISES INC	7616	(*)		(*)		(*)	
BEST MEATS	7617	(*)		(*)		(*)	
PARK RIVER LOCKER PLANT	7618	(*)		(*)		(*)	
NIAGARA LOCKERS	7619	(*)		(*)		(*)	
BOWDEN LOCKER PLANT	7620	(*)	(*)	(*)		(*)	
LANGDON LOCKERS	7622	(*)	(*)	(*)		(*)	
AAFEDTS LOCKER PLANT	7623	(*)		(*)		(*)	
ROCKLAKE LOCKER PLANT	7624	(*)		(*)		(*)	
ANETA MEATS	7625	(*)		(*)	(*)	(*)	
NORTH DAKOTA STATE UNIVERSITY ANIMAL SCIENCE	7627	(*)		(*)		(*)	
GRANN'S PROCESSING	7634	(*)		(*)		(*)	
BICKLER'S JACK & JILL	7635	(*)	(*)	(*)	(*)	(*)	
DAKOTA MEATS INC	7636	(*)	(*)	(*)	(*)	(*)	
NORTH DAKOTA STATE HOSPITAL	7639	(*)	(*)				
MYERS MEAT PROCESSING	7641	(*)		(*)		(*)	
HILLSIDE MEAT CO	7642	(*)		(*)		(*)	
CITY MEAT & LOCKER	7644	(*)		(*)		(*)	
WETSCH JACK & JILL	7646	(*)				(*)	
FRED BORN	7648	(*)				(*)	
SMITH RED BARN INC	7649	(*)				(*)	
K & E PROCESSING & SALES	7655	(*)		(*)		(*)	
JOHN BONN	7656	(*)				(*)	
JAT CORORATION	7661	(*)	(*)	(*)		(*)	
MORGAN COLORADO BEEF CO	7671	(*)					
CITY MEAT CO	7677	(*)		(*)		(*)	
RAHR MEAT SERVICE	7678	(*)		(*)			
MILES CITY PACKING CO	7679	(*)	(*)	(*)			
HARDT'S INC	7684	(*)					
SEITZ-BOWERS PROCESSING PLANT	7685	(*)		(*)		(*)	
TIMBERLAND PACKING CORPORATION	7687	(*)	(*)	(*)			
ROCKY MOUNTAIN PACKING CO INC	7690	(*)	(*)	(*)		(*)	
TRIANGLE PACKING CO	7691	(*)					
MARIAS PACKING CO	7692	(*)	(*)	(*)		(*)	
LLOYD & SCHMITT'S STANFORD MEAT	7694	(*)		(*)			
C & W MEAT CO	7695	(*)	(*)	(*)		(*)	
MONTANA STATE PRISON	7737	(*)				(*)	
ROBERTS PACKING PLANT	7709	(*)	(*)			(*)	
C & P PACKING PLANT INC	7710	(*)		(*)	(*)	(*)	
HI-LINE PACKING	7711	(*)		(*)			
FAN MOUNTAIN MEATS	7712	(*)	(*)	(*)		(*)	
GALLATIN VALLEY PACKING	7713	(*)	(*)	(*)	(*)	(*)	
KALISPELL MEAT CO	7716	(*)	(*)	(*)			
WHITES WHOLESALE MEATS	7717	(*)	(*)	(*)		(*)	
VANDERVANTER MEATS	7718	(*)	(*)				
RASMUSSEN MEATS	7719	(*)	(*)		(*)	(*)	
TOLMAN MEAT PROCESSING	7724	(*)	(*)	(*)		(*)	
DOUGLAS PROCESSING & COLD STG INC	7731	(*)		(*)		(*)	
MICKEY'S PACKING PLANT	7732	(*)	(*)	(*)		(*)	
LIMON PACKING CO	7738	(*)		(*)			
MODERN LOCKER PLANT	7745	(*)	(*)	(*)	(*)	(*)	
COLORADO STATE UNIV DEPT OF ANIMAL SCIENCES	7747	(*)		(*)		(*)	
CEDAREDGE LOCKER PLANT	7748	(*)		(*)	(*)	(*)	
ROYAL GORGE PACKING CO INC	7749	(*)		(*)	(*)	(*)	
CREST PAK, INC.	7751	(*)					
BLAINE MEAT CO	7755	(*)					
E JET PAK INTERNATIONAL INC	7755						(*)
UNIVERSITY OF MINNESOTA MEAT SCIENCE LAB	7759	(*)	(*)	(*)		(*)	
BOB EVANS FARM INC	7763					(*)	
ADAMS LOCKER	7774	(*)	(*)	(*)		(*)	
DALES MEAT PROCESSING	7781	(*)	(*)	(*)		(*)	
LINDENFELSER MEATS	7782	(*)				(*)	
HUETTLS LOCKER & DRESSING PLANT	7785	(*)	(*)	(*)		(*)	
SWANSON MEAT MARKET	7790	(*)	(*)			(*)	
CARLOS LOCKERS	7796	(*)	(*)	(*)	(*)	(*)	
GARFIELD LOCKER	7797	(*)	(*)	(*)		(*)	
CLARISSA MEATS	7799	(*)	(*)	(*)	(*)	(*)	
CCB ABATTOIR	7801	(*)	(*)	(*)			

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 18 OF 25 PAGES)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
BANGOR BEEF CO	7806	*	*			*	*
CONTI PACKING CO INC	7814	*					
KENNETH BAKER FARMS	7845	*	*	*	*	*	*
READFIELD ABATTOIR	7874	*	*	*	*	*	*
BOVALINA PACKING CO INC	7875	*	*	*	*		
HORST CUSTOM SLAUGHTERING & PROCESSING	7882	*	*	*		*	
PETER D VILLARI INC	7887					*	*
JAMES F ETZLER	7897	*					*
BRADLEY PROCESSING CO	7900	*					*
LAWSON PACKING CO	7908	*	*	*	*	*	*
WRIGHT'S PROVISIONS INC	7920						*
PARTIN'S COUNTRY SAUSAGE	7923						*
ROBBINS PACKING CO INC	7932	*					*
ELM HILL MEATS INC	7936	*					*
KOCH BEEF CO	7937	*	*				
HIXSON PACKING CO	7938	*	*		*	*	*
SOUTHERN PACKING CORPORATION	7945	*	*	*		*	*
CHARLES J SCHMIDT & CO	7948	*		*			
DREHER PACKING CO INC	7957						*
MATKINS MEAT PROCESSORS INC	7975	*	*				*
KLING'S MEAT MARKET	7983	*	*	*			*
UNIVERSITY OF KENTUCKY MEAT LABORATORY	8013	*		*			*
BERRYHILL MEAT PROCESSING	8016	*	*		*	*	*
V W MILLER & SONS	8022	*	*	*			*
COUNTRY CORNER MEAT CENTER	8024	*	*	*	*	*	*
BOURBON PACKING CO	8027	*					*
WALTON LOCKER & SLAUGHTER PLANT	8031	*		*			*
BILL WHEELER SLAUGHTER HOUSE	8034						*
FARMERS SLAUGHTER HOUSE	8035	*		*	*	*	
HARRY ROSS PACKING CO	8045	*					*
SLADE'S MEAT PACKERS INC	8054	*					*
HUGHES MARKET	8055						*
JUENGLING COMMODITIES CORPORATION	8058	*					
S M CAMPBELL CO INC	8062	*					*
LORETTO MEAT PROCESSORS	8064	*	*	*	*	*	*
GRIBBLE'S PROCESSING	8066	*	*				*
ROYAL PACKING CO	8069	*					*
BOONE'S BUTCHER SHOP	8078	*	*	*			
KIRBY & POE SLAUGHTER HOUSE	8082	*					*
GREGORY SLAUGHTER HOUSE INC	8083	*		*			*
RIGHT BEAVER PACKING CO	8086	*	*				*
DOUGLASS SLAUGHTER HOUSE	8087	*					*
ELMORE & PAYNE PACKING CO INC	8089	*	*	*	*	*	*
PICKETT'S PROCESSING INC	8090	*					
IGNACIO FOOD STORE INC	8123	*		*			*
IGNACIO FOOD STORE INC	8123A	*					*
STEAMBOAT PACKING CO	8124	*	*	*			*
JENSEN'S BLUE RIBBON PROCESSING INC	8131	*			*	*	*
BROWNSDALE MEAT SERVICE INC	8189	*	*	*			*
SOL'S PACKING	8195	*	*	*	*	*	*
C V PANIZERA	8271	*	*	*	*	*	*
SUNSHINE MEAT CO	8286	*	*	*	*	*	*
CURTIS PACKING CO INC	8302	*	*	*	*	*	*
NATION'S MEAT CO INC	8303	*					*
LARRY'S SAUSAGE CO	8305						*
FALCON WHOLESALE MEAT	8309	*					*
FULLER SLAUGHTER PLANT	8312	*			*	*	*
FORTENBERRY SAUSAGE CO	8313	*	*	*			*
SWAGGERTY SAUSAGE CO INC	8314	*					*
WADE AUSMUS	8315	*					
HERRON PACKING CO	8316	*	*	*	*	*	*
LINGO PACKING CO	8319	*					*
ESTEPP SLAUGHTER	8320	*	*	*			*
SELL MEAT CO INC	8321	*	*	*			
WADE BULLA SLAUGHTER HOUSE	8323	*	*				*
MADISON PACKING CO	8325	*			*	*	*
VALLEY SLAUGHTER & PROCESSING	8326	*	*	*			
B & B PACKING CO	8327	*	*				*

ESTABLISHMENTS SLAUGHTERING HUMANELY

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
HOLDEN BROTHERS PACKING CO	8329	*				*	
D & W PACKING INC	8331	*					
Q R S MEAT CO INC	8332	*			*	*	
COOP AGRICOLA DE CIDRA	8336	*	*	*			
PERFECTA USA INTERNATIONAL E	8337						*
HOLLAND & DOTSON SLAUGHTER & PROCESSING	8339	*				*	
CITY PACKING CO	8341					*	
ALLIED MILLS INC	8344	*	*	*	*	*	
EMORY RIVER PROCESSING CO	8353	*				*	
R G GUNNOE FARMS INC	8392					*	
TURNER FARM MEAT PROCESSING	8401	*				*	
COLQUITT MEAT CO	8404	*			*	*	
DUNN BROS	84040	*	*		*	*	
ROBINSON SAUSAGE CO	8405	*				*	
ROBERT L BULLOCK	8461	*	*	*		*	
CENTRAL MEAT PACKING DIV CENTRAL FOOD SERVICE	8496	*	*			*	
CONNECTICUT PACKING CO	8502	*	*	*	*	*	
KARL EHMER INC	8520A	*					
BURTON BLOCK E	8523						*
CORBIN MEAT PACKING CO	8537	*	*	*	*		
CHAMPLAIN BEEF CO	8547	*	*	*		*	
BLOUGH PACKING	8551	*	*	*	*	*	
LEALI BROS INC	8555	*	*	*		*	
NEW HOLLAND MEAT MARKET	8556	*	*			*	
SHOBER & SONS INC	8557	*	*				
M & J HOUSE OF BEEF & PORK INC	8558	*	*	*		*	
S WRIGHT MEAT PACKING CO	8559	*		*	*	*	
JUNIATA PACKING CO	8560	*	*	*		*	
GODFREY BROS	8562	*	*	*		*	
R L SIPES LOCKER PLANT	8565	*	*	*		*	
WELTERS CUSTOM SLAUGHTERING	8569	*				*	
W W SNAVELY & SON	8570	*	*	*		*	
KNUPP BROTHERS	8572	*	*	*		*	
JAMES EBERLY	8573	*	*	*		*	
CHARLES ILYES	8576	*		*		*	
PETERS BROS MEAT MARKET INC	8581	*	*	*	*	*	
RICHARD W SERENA	8582	*					
FRITZ'S MEATS	8585	*				*	
BILSKI MEATS	8586	*	*	*	*	*	
MOWRY'S MEAT PROCESSING	8587	*	*	*		*	
LLOYD & EARL YOUNDT	8588	*	*			*	
CUNNINGHAM PKG CO	8590	*	*	*		*	
CARL GOOD INC	8591	*	*			*	
JOHN M PELUSO & SONS	8592	*				*	
ROSE'S SLAUGHTER HOUSE	8595	*	*	*		*	
SECHRIST BROS INC	8596	*	*	*			
RILEY MEAT PROCESSING	8604	*	*	*		*	
RICHARD L BECK & SONS INC	8607	*	*	*	*	*	
CHARLES WINICK	8608	*	*	*		*	
NEW WILMINGTON SLAUGHTER HOUSE	8609	*	*	*		*	
JAMES R MCDEAVITT	8610	*	*	*		*	
WITMAN'S MEATS	8611	*	*	*		*	
KOVACEVIC BROS PACKING CO	8612	*	*	*	*	*	
KARL K KLING	8613	*	*	*			
HI WAY MEAT MARKET	8615	*	*	*		*	
DYSINGER MEATS INC	8622	*	*	*		*	
PAUL E ADAMS	8623	*	*			*	
C M REED'S SONS	8624		*				
A J PEACEY & SONS	8628	*	*	*		*	
RAY T BENNER & SON	8630	*	*			*	
HARRY HARPER WAGNER	8631	*					
HONSAKER BROS MEAT MARKET	8632	*	*	*		*	
TED'S MEAT MARKET	8633	*	*	*		*	
ESPENSHADE QUALITY MEATS	8635	*	*	*			
HIRSCH-MEATS	8636	*	*	*		*	
ECONOMY LOCKER STORAGE CO INC	8642	*	*	*	*	*	
CECIL F FRAKER	8643	*	*	*		*	
REBUCK FARMS	8644	*	*	*			

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 20 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
ROTHERMEL MEATS	8645	*	*	*	*	*	
HARVEY A KIPP	8646	*	*	*		*	
HENRY'S MEAT MARKET	8648	*	*	*		*	
GIUNTA WHOLESALE MEATS	8649	*	*	*	*	*	
HILLENBURG PROCESSING & SLAUGHTER	8680A	*	*	*	*	*	
DAN'S COUNTRY MEATS INC	8681	*	*	*	*	*	
QUEEN CITY PACKING CO	8682	*	*	*		*	
LE DUC PACKING CO	8687	*	*	*	*	*	
CANTON LOCKER SLAUGHTER HOUSE	8689A	*	*	*	*	*	
POLO LOCKER SYSTEM INC	8695	*	*			*	
NEW FRANKLIN LOCKER SERVICE	8696	*	*	*	*	*	
UHRIGS SLAUGHTER HOUSE	8697	*	*				
WRIGHT CITY MEAT CO	8699	*	*			*	
WEBER MEAT SERVICE	8702	*	*	*	*	*	
WARNER LOCKER INC	8703	*				*	
PRINCETON FOOD SERVICE	8705	*	*	*	*	*	
OYLER'S LOCKER SERVICE	8706	*		*			
NOVINGER FOOD LOCKER	8707	*	*	*	*	*	
HALE LOCKER PLANT	8710	*	*			*	
DON'S PLACE	8714	*	*	*	*	*	
WENTZVILLE CATTLE INVESTMENT CO	8715	*	*		*	*	
BOUCHAERT PACKING CO	8716	*					
KELLER PROCESSING SERVICE	8717	*	*	*	*	*	
SERLOIN CHOPS OF STEPHENVILLE	8719	*				*	
GROVES PACKING CO	8724	*	*			*	
GOLDEN CITY MEAT CO	8725	*	*	*	*		
ALMA COOP LOCKER ASSN	8728	*	*	*		*	
BOOMER PACKING CO INC	8729	*	*	*	*	*	
LEWISTOWN LOCKER	8730	*	*	*		*	
UPTOWN SLAUGHTER HOUSE	8731	*	*	*		*	
PLEASANT HILL MEAT CO	8734	*	*				
MAUPIN PROCESSING PLANT	8735	*	*		*		
LOCKNEY MEAT CO	8736	*	*	*	*	*	
ADRIAN MEATS	8737	*	*	*		*	
STONYHILL MEAT	8738	*	*	*	*	*	
RIVERLAND FOOD CORP	8740	*	*				
BAKER PACKING CO	8743	*	*	*		*	
SCHOOL OF THE OZARKS	8745	*	*			*	
GLASGOW LOCKER PLANT	8747	*	*	*		*	
HAMILTON LOCKER	8748	*	*	*		*	
THERIAULT'S ABATTOIR INC	8772	*	*			*	
CLARK PACKING CO INC	8799					*	
MONROEVILLE PACKING CO	8850	*	*	*	*	*	
E AMFRAN PACKING CO INC	8861						*
OXFORD ABATTOIR	8866	*	*	*	*		
JOHN F MARTIN & SONS INC	8888	*	*			*	
WEST DOVER BUTCHER SHOP	8892	*	*				
GREGGWOOD FARM	8901					*	
ERDMAN SUPERMARKETS INC	8905	*	*	*		*	
MCDONALD'S FOOD MARKET	8915	*				*	
ST JOSEPH MEAT MARKET INC	8916	*	*	*		*	
FROZ-N-FOODS CO	8917	*	*	*	*	*	
GORDHAMER'S FOOD MARKET	8920	*				*	
RUCK'S MEAT PROCESSING CENTER INC	8921	*	*	*	*	*	
READ'S PROCESSING SERVICE	8922	*		*		*	
IMDIEKE'S MEATS	8927	*	*	*		*	
RAPIDS LOCKER	8928	*	*	*	*	*	
PLANTENBERG MARKET INC	8931	*	*			*	
CARLSON MEAT PROCESSING INC	8948	*	*	*	*		
DAVE & TED'S LOCKERS INC	8950	*	*	*	*	*	
FERGUS LOCKER PLANT	8952	*	*			*	
APPERT'S INC	8953	*	*	*		*	
SPIKES LOCKERS	8954	*	*				
HERGES MEAT MARKET INC	8959	*	*	*	*	*	
CITY MEAT MARKET	8960	*	*			*	
NEW MUNICH LOCKER PLANT	8961	*	*			*	
PETER'S FOOD MARKET	8963	*	*			*	
FORSTER PACKING CO INC	8966	*	*	*		*	

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 21 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
PARROT PACKING CO INC	8968	(*)	(*)			(*)	
DREWES FROZEN FOOD CENTER	8971	(*)	(*)	(*)	(*)	(*)	
FOSSTON COOP ASSN	8974	(*)	(*)			(*)	
CITY MEAT MARKET	8975	(*)	(*)	(*)		(*)	
LYNCH'S FOODS	8976	(*)	(*)	(*)		(*)	
GENEVA MEATS & PROCESSING	8979	(*)	(*)	(*)	(*)		
GREENWALD LOCKER PLANT	8982	(*)	(*)				
DELFT BLUE-PROVIMI INC	8984					(*)	
JOPPRU INC	8988	(*)		(*)	(*)	(*)	
WIDBOOM MEAT SERVICE	8989	(*)	(*)	(*)		(*)	
COUNTRY SIDE MEATS	9003	(*)	(*)	(*)	(*)	(*)	
CALIFORNIA STATE UNIV MEAT LABORATORY	9004	(*)		(*)		(*)	
JOHANSEN'S MEAT MARKET	9008	(*)	(*)	(*)	(*)	(*)	
MOXON'S GOLD STAR MEAT	9024	(*)	(*)	(*)	(*)	(*)	
MARIN MEAT CO	9025	(*)	(*)	(*)			
SWINGLE MEAT CO	9032	(*)		(*)	(*)	(*)	
THOS G EVART MEAT CO	9049	(*)	(*)	(*)	(*)	(*)	
MODOC MEAT PACKERS	9053	(*)		(*)	(*)	(*)	
WAMPLER WHOLESALE MEATS INC	9065	(*)	(*)			(*)	
BELVIDERE PACKING CO INC	9068	(*)	(*)	(*)		(*)	
THOMASTON BEEF & VEAL INC	9069	(*)	(*)	(*)	(*)	(*)	
SMITH'S MEAT PROCESSING CO	9073	(*)	(*)	(*)		(*)	
SNOW HILL PROCESSING PLANT	9075	(*)	(*)			(*)	
GOLD KIST INC	9084	(*)	(*)			(*)	
SNAPPS FERRY PROCESSING CO	9085	(*)	(*)			(*)	
W R DELOZIER SAUSAGE CO	9086	(*)	(*)			(*)	
TOM KING & SON PACKING CO	9091	(*)					
LAUDERDALE FARMS CO	9095	(*)			(*)	(*)	
CARTERS VALLEY PACKING CO	9107	(*)		(*)	(*)	(*)	
ELLIOTT & SON'S	9111	(*)				(*)	
FAIRPLAY MEAT PROCESSING INC	9112	(*)				(*)	
SCOTT MEAT CO	9124	(*)	(*)	(*)	(*)	(*)	
JACKSON PACKING CO	9130	(*)				(*)	
AVCO MEAT CO INC	9131	(*)					
JUSTICE PACKING CO	9136	(*)	(*)				
STEVE BROOKS MEATS	9139	(*)					
SOWEGA MEAT CO	9142	(*)	(*)	(*)	(*)	(*)	
SOUTHERN ABATTOIR MEAT SUPPLY CO	9143	(*)	(*)			(*)	
MICKEY'S MEATS	9144	(*)			(*)		
BILL OPELL'S MEAT PROCESSING	9148	(*)	(*)	(*)		(*)	
FLORIDA STATE MEAT PACKERS INC	9153	(*)					
MCLENDON MEAT CO	9159	(*)		(*)	(*)	(*)	
SCOTT MEAT PACKERS INC	9160	(*)	(*)		(*)	(*)	
SHULL SAUSAGE CO INC	9161					(*)	
LAKEVIEW PACKING CO	9166	(*)				(*)	
PASTURES INC E	9174						(*)
CATTLEMAN PACKING CO	9177	(*)				(*)	
CARROLL PACKING CO	9185	(*)	(*)		(*)	(*)	
RIVER ROUTE PACKING PLANT INC	9186	(*)					
PARIS MEAT PROCESSING CO	9187	(*)	(*)		(*)	(*)	
FARM FRESH MEATS INC	9189	(*)	(*)			(*)	
CLIATT-WELLS COUNTRY STYLE WHOLE HOG SAUSAGE	9190					(*)	
HAMILTON PACKING CO INC	9191	(*)				(*)	
UNIVERSITY OF TENNESSEE MEAT LABORATORY	9193	(*)				(*)	
SOUTHEASTERN MEAT PROCESSING	9196	(*)	(*)		(*)	(*)	
TWIN STATE COLD STORAGE	9199	(*)				(*)	
HILL MEAT CO INC	9201	(*)	(*)	(*)		(*)	
DELTA MEATS INC	9209	(*)	(*)	(*)	(*)	(*)	
SANTIAM MEAT PACKERS	9220	(*)	(*)	(*)	(*)	(*)	
OREGON STATE UNIV MEAT SCIENCE LABORATORY	9223	(*)		(*)		(*)	
CARLTON PACKING CO	9228	(*)	(*)	(*)		(*)	
DAYTON MEAT CO	9230	(*)	(*)	(*)	(*)	(*)	
HABERMANS MEAT SERVICE	9232	(*)	(*)	(*)	(*)	(*)	
STAFFORD'S MEATS	9233	(*)	(*)	(*)	(*)	(*)	
JACOBSMUHLENS MEATS	9234	(*)	(*)	(*)	(*)	(*)	
A & B MEAT PACKING	9239	(*)	(*)	(*)	(*)	(*)	
POPE'S MERRILL MEAT CO	9240	(*)	(*)	(*)		(*)	
FARMER PACKING CO	9243	(*)	(*)	(*)	(*)	(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 22 OF 25 PAGE(S)

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
HORIZON PACKING CO	9245	(*)	(*)				
BOYER MEAT CO	9246	(*)	(*)	(*)	(*)	(*)	
LOA MEATS INC	9248	(*)		(*)		(*)	
ERDMAN PACKING CO	9249	(*)	(*)	(*)	(*)	(*)	
TRI VALLEY MEAT CO	9251	(*)	(*)	(*)	(*)	(*)	
MOHAWK PACKING CO	9252	(*)	(*)	(*)	(*)	(*)	
SPRINGFIELD SLAUGHTER PLANT	9256	(*)	(*)	(*)	(*)	(*)	
GATES WAY MEAT CO	9257	(*)	(*)	(*)		(*)	
MOLALLA MEATS	9263	(*)	(*)	(*)	(*)	(*)	
LEE MEAT CO	9264	(*)	(*)	(*)	(*)	(*)	
MARKS MEAT CO	9265	(*)	(*)	(*)	(*)	(*)	
IOWA BEEF PROCESSORS INC	9268	(*)					
MT ANGEL MEAT CO	9270	(*)	(*)	(*)	(*)	(*)	
OREGON STATE PENITENTIARY ANNEX	9272	(*)				(*)	
INDEPENDENCE CUSTOM MEAT SERVICE	9273	(*)	(*)	(*)	(*)	(*)	
MCKILLIP BROS MEAT CO INC	9274	(*)				(*)	
BOSTON'S BEEF HOUSE	9275	(*)	(*)	(*)			
K-K RANCH MEATS	9276	(*)		(*)		(*)	
HOPKINS WHOLESALE MEATS	9277	(*)	(*)	(*)		(*)	
JOHN DAY VALLEY PACKING CO	9286	(*)	(*)	(*)	(*)	(*)	
D & L MEAT CO	9287	(*)	(*)	(*)	(*)	(*)	
WILDER MEAT CO	9289	(*)	(*)	(*)	(*)	(*)	
CROOKED RIVER MEAT CO	9291	(*)	(*)	(*)	(*)	(*)	
E ORIO MEAT CO	9294						(*)
WALT'S CUSTOM SLAUGTERING	9300	(*)	(*)	(*)	(*)	(*)	
TERRY BROS INC	9315	(*)	(*)	(*)		(*)	
VERNS MOSES LAKE MEATS	9318	(*)	(*)	(*)		(*)	
CURCIO'S MEAT CO	9319	(*)	(*)		(*)	(*)	
WASHINGTON STATE UNIV MEAT SCIENCE LAB	9322	(*)	(*)	(*)		(*)	
FONDIS PACKING & CATTLE CO	9324	(*)	(*)	(*)	(*)	(*)	
LAMPAERT MEATS	9325	(*)	(*)	(*)	(*)	(*)	
OWENS PACKING CO	9331	(*)	(*)			(*)	
COLVILLE MEAT PROCESSOR'S	9334	(*)	(*)	(*)		(*)	
MC INRAY MEAT CO	9335	(*)	(*)				
WENATCHEE MEAT PACKING INC	9338	(*)	(*)			(*)	
MIDWAY MEATS	9347	(*)	(*)	(*)		(*)	
DWIGHT GORDON	9351	(*)	(*)	(*)		(*)	
FAIR VIEW FARM	9353	(*)	(*)	(*)		(*)	
RUDOLPH MAMULA	9357	(*)	(*)	(*)	(*)	(*)	
HARVEY E DELP	9359	(*)	(*)			(*)	
BALTHASER'S MEAT MARKET INC	9360	(*)	(*)	(*)	(*)	(*)	
MERVIN F MOYER	9363	(*)		(*)			
GRETTLER MEAT PACKERS	9366	(*)	(*)	(*)	(*)	(*)	
ALLENS MILLS FRESH MEATS	9367	(*)	(*)	(*)		(*)	
MIKE ZRILE MEAT	9368			(*)			
ALEX FROEHLICH PACKING CO	9369	(*)	(*)	(*)		(*)	
J T BARTON	9371	(*)	(*)	(*)		(*)	
MUTZABAUGH'S SLAUGHTER HOUSE	9372	(*)	(*)	(*)	(*)	(*)	
H L PEACHEY JR	9373	(*)	(*)	(*)		(*)	
GREGORY'S TROY MEAT PROCESSING CO INC	9374	(*)	(*)	(*)		(*)	
STOCKDALE MEAT & PROVISION	9375	(*)	(*)			(*)	
WILLIAMSON'S WHOLESALE MEATS INC	9376					(*)	
HENNINGER'S MEAT MARKET	9377	(*)	(*)	(*)		(*)	
BIERLY MEAT MARKET	9380	(*)	(*)	(*)		(*)	
ELMO MANIERI'S MEATS	9381	(*)	(*)	(*)	(*)	(*)	
MIKE'S PACKING CO	9382	(*)	(*)	(*)		(*)	
WARRINGTON PACKING CO INC	9384	(*)	(*)			(*)	
GREEN VALLEY PACKING CO	9385	(*)	(*)	(*)	(*)	(*)	
ADAM BUTZ JR	9389	(*)	(*)			(*)	
SHAW BROS INC	9390	(*)	(*)	(*)		(*)	
ROCKINGHAM COUNTY FARM	9395	(*)				(*)	
DIXON'S MEATS	9398	(*)	(*)	(*)	(*)	(*)	
BRISTOL BEEF CO INC	9399	(*)	(*)	(*)	(*)	(*)	
J V TAYLOR INC	9400	(*)	(*)				
BATTLES MEAT PROCESSING PLANT	9421	(*)	(*)	(*)	(*)	(*)	
JOE DEFELICE & SONS	9402	(*)	(*)	(*)		(*)	
GILLO BROS	9403	(*)	(*)	(*)		(*)	
T P CUNNINGHAM MEATS	9410	(*)	(*)	(*)	(*)	(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 23 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
SHUPES HOME DRESSED MEATS	9413	(*)	(*)			(*)	
GINO GIULIANI	9414	(*)	(*)	(*)	(*)	(*)	
EDWARD GALVANEK & SONS	9415	(*)	(*)	(*)	(*)	(*)	
FRANCONIA MEATS	9417	(*)	(*)	(*)	(*)	(*)	
LOVE WELLS COUNTRY MARKET	9419	(*)	(*)	(*)		(*)	
RICE'S MEAT MARKET	9420	(*)	(*)	(*)	(*)	(*)	
KVERAGAS MEAT PLANT	9422	(*)	(*)	(*)		(*)	
STEELY MEATS	9423	(*)	(*)	(*)		(*)	
PATH VALLEY MEATS	9425	(*)	(*)	(*)		(*)	
HAROLD WENTWORTH	9428	(*)	(*)	(*)	(*)	(*)	
ZECHMAN'S BUTCHER SHOP	9430	(*)	(*)	(*)		(*)	
YAMBROVICH MEATS	9435	(*)	(*)	(*)		(*)	
RUPERT'S MEAT MKT	9437	(*)	(*)	(*)	(*)	(*)	
THREE SONS MEAT MARKET	9438	(*)	(*)	(*)		(*)	
BURKHOLDER'S MEAT MARKET	9440	(*)	(*)				
GROFF MEATS INC	9442	(*)	(*)	(*)		(*)	
KREISL CO INC	9444	(*)					
SMITH'S SUPER MARKET INC	9445	(*)	(*)	(*)		(*)	
GRILL'S BUTCHER SHOP	9448	(*)					
GEORGE N BYERLY	9450	(*)	(*)	(*)		(*)	
SHAMOKIN PACKING CO	9451	(*)	(*)	(*)		(*)	
GIORDANO SAUSAGE	9456		(*)	(*)	(*)	(*)	
RENDULIC PACKING CO	9457	(*)				(*)	
ARTHUR B WENGER	9459	(*)	(*)			(*)	
R E HERSHEY INC	9464	(*)	(*)	(*)			
HERFURTH BROS MEAT CO	9465	(*)	(*)	(*)		(*)	
MYERS BROTHERS	9469	(*)	(*)	(*)		(*)	
RANCK'S MEAT MARKET	9473	(*)	(*)				
U S PENITENTIARY	9474	(*)		(*)		(*)	
ESPEY'S MEAT MARKET	9482	(*)	(*)	(*)	(*)	(*)	
R V WANTZ & SONS	9483					(*)	
WALTER Z DILLON	9484	(*)	(*)	(*)		(*)	
WERRY PROVISION	9489	(*)	(*)	(*)	(*)	(*)	
MARK R BUCHER	9492	(*)	(*)	(*)		(*)	
CHRISTMAN & FOX	9494	(*)	(*)			(*)	
THORNTON MEATS	9497	(*)	(*)	(*)	(*)	(*)	
PHILADELPHIA PORK PACKERS INC	9498	(*)	(*)	(*)		(*)	
WINDSOR MEAT MARKET	9500	(*)	(*)	(*)	(*)	(*)	
STONEBRIDGE FARM BUTCHER SHOP INC	9509	(*)	(*)	(*)		(*)	
FRED E SHIVELY	9511	(*)	(*)	(*)		(*)	
R P HOWRY INC	9513	(*)	(*)	(*)			
LEIDY'S INC	9520	(*)	(*)			(*)	
WEISS PACKING CO INC	9528	(*)	(*)	(*)	(*)	(*)	
EAST CARSON PACKING CO	9529		(*)	(*)			
PENNER PROVISION CO	9535	(*)		(*)			
BRIGHT BYERLY	9536	(*)	(*)			(*)	
KEN WEAVER MEATS INC	9538	(*)	(*)			(*)	
CLYDE R ALBERTSON	9540	(*)	(*)	(*)		(*)	
ANDERSON QUALITY MEAT MARKET	9541	(*)	(*)	(*)	(*)	(*)	
LEMAY & SONS BEEF	9542	(*)	(*)	(*)		(*)	
UNIVERSITY OF NEW HAMPSHIRE MEAT LABORATORY	9546	(*)		(*)		(*)	
EZRA W MARTIN CO	9547					(*)	
WAYNE NELL & SONS MEATS	9548	(*)	(*)	(*)	(*)	(*)	
BEACH MEAT MARKET	9550	(*)	(*)			(*)	
GREAT VALLEY MEAT MKT DOMINIC MEOLI	9557	(*)	(*)	(*)	(*)		
C P RHOADES & SON INC	9559	(*)	(*)	(*)			
FORREST D KISTLER	9561	(*)	(*)				
ANDERSON & LEHR MEATS	9562	(*)	(*)	(*)		(*)	
CHARLES T HEARD & CO	9563	(*)		(*)			
PUTNAK PACKING CO	9564	(*)	(*)			(*)	
MYERS MEAT	9565	(*)		(*)		(*)	
PERRY PACKING	9566	(*)	(*)	(*)	(*)	(*)	
PIERCE CUSTOM SLAUGHTER CO	9567	(*)	(*)	(*)	(*)	(*)	
CLOVERBLOOM FARM MARKET	9570	(*)	(*)			(*)	
FICHERA'S MEATS INC	9576	(*)	(*)	(*)	(*)	(*)	
GOULDEY & SONS INC	9577	(*)	(*)	(*)		(*)	
O J HYNES	9579	(*)	(*)	(*)		(*)	
GOURLEY PACKING CO INC	9580	(*)	(*)	(*)		(*)	

ESTABLISHMENTS SLAUGHTERING HUMANELY PAGE 24 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
LIVINGSTON PACKING CO	9581	*	*	*		*	
JONES ABATTOIR	9584	*	*	*	*	*	
LOUIS KLINE INC	9589	*	*	*	*	*	
GEORGE'S MEATS	9590	*	*			*	
CONGENS AQUILANTE	9603	*	*	*			
HAROLD A DOBB	9605	*	*	*		*	
DOWNINGTOWN WHOLESALE MEATS	9606	*	*	*		*	
FRANK ESPOSITO & SONS	9607	*	*				
GOODHARTS	9609	*	*	*		*	
LUKON MEATS INC	9616	*	*	*		*	
MOCCIO PACKING	9618	*	*				
GEORGE'S MEAT MARKET INC	9620	*	*	*	*	*	
CHARLES J PUDLINER	9622	*	*	*	*	*	
RHODES' MEAT MARKET	9623	*	*	*		*	
STOLTZFUS LOCKER & IGS FOOD MARKET	9625	*	*				
EBLING'S MEAT MARKET	9630	*	*	*		*	
PIFFERETTI PACKING CO	9631	*	*	*	*	*	
BURKHOLDER MEAT PRODUCTS	9632	*	*	*	*	*	
JONATHAN L KING	9633	*	*	*		*	
TURNER FARMS INC	9634	*	*			*	
R D KELLY MEAT PACKING	9635	*	*	*		*	
M LEPIDI & SONS INC	9636	*	*	*		*	
KRALL'S MEAT MARKET	9638	*	*	*		*	
F & S MEATS	9639	*	*	*		*	
GLEN J ROSENBERRY	9640	*	*	*		*	
ALBA'S MEAT MARKET	9643	*	*				
MRS EDITH ONDILLA	9644	*	*			*	
SHAFFER'S ABATTOIR INC	9645	*	*	*			
YOST QUALITY MEATS	9646	*	*	*	*	*	
WATSON'S HOME DRESSED MEATS	9647	*	*	*	*	*	
JOSEPH VENEZIA DRESSED BEEF	9666	*	*				
BALDERSTON BROS	9670	*	*	*			
CATELLI INC	9671				*		
PRINCZ'S HOME DRESSED MEATS	9673	*	*	*	*	*	
FIERRO'S FOOD MARKET INC	9674	*					
CRISSMAN INC	9679	*	*	*	*	*	
PAINTER'S MEAT PRODUCTS	9683	*	*	*		*	
KECK'S MEAT PLANT	9684	*	*	*		*	
FETTEROLF'S MEAT MARKET	9685	*	*	*		*	
MARK BOWMAN	9686	*	*			*	
LEE BIXLER	9687	*	*	*		*	
BOYER'S MEATS	9688	*	*			*	
KOLB'S MEAT MARKET	9689	*	*	*	*	*	
CARL VENEZIA MEATS	9693	*	*	*			
PAUL H SCHNECK	9695	*	*	*	*	*	
ROBERT L BINGMAN	9696	*	*	*		*	
SMITH MEATS	9697	*	*	*			
HOLLAND BROS MEATS	9701	*	*	*		*	
ALFERY'S SAUSAGE CO INC #2	9702	*	*	*	*	*	
SPRINGFIELD MEAT CO	9704	*	*	*			
BARINGER BROS	9706	*	*	*		*	
HAGERS MEAT MARKET	9707	*	*	*			
HANSON'S FREEZER MEATS	9711	*	*	*	*	*	
COFFARO CUSTOM BUTCHERING	9712	*	*	*	*	*	
THOMA MEAT MARKET	9714	*	*	*	*	*	
DAVE FINE MEAT PACKER INC	9715	*	*	*	*	*	
LOUTSION PACKING CO INC	9716	*	*	*	*	*	
LEE GASHEL & SONS INC	9717	*	*	*		*	
AMERICAN FOODS INC	9718	*	*	*		*	
KOLB & DICKINSON 84 PACKING CO	9719	*	*	*	*	*	
SMITH'S FROZEN FOOD	9720	*	*	*	*	*	
HEINNICKEL FARMS INC	9725	*	*	*		*	
WALTER'S MEATS	9726	*	*	*		*	
HILLCREST PACKING CO	9747	*	*	*	*	*	
JOSEPH BENZAK JR	9753	*	*	*	*	*	
LEMHENEY BUTCHER SHOP INC	9755	*	*	*	*	*	
ROYAL SWAN FOODS INC	9758	*	*	*		*	
REHRIG'S QUALITY MEATS INC	9759	*	*	*		*	

ESTABLISHMENTS SLAUGHTERING HUMANELY — PAGE 25 OF 25 PAGES

NAME OF ESTABLISHMENT	EST. NO.	CATTLE	CALVES	SHEEP	GOATS	SWINE	EQUINE
GILBERT'S MEATS	9762	(*)					
HEINTZELMAN'S MEAT MARKET	9763	(*)	(*)				
DELBERT E HAYDT	9765	(*)				(*)	
MULITSCH'S PORK PRODUCTS	9766					(*)	
JOHN J ELNITSKI	9767	(*)				(*)	
WALTER JURCZAK	9770	(*)	(*)	(*)	(*)	(*)	
ALBERT CARUTH	9776	(*)					
HOWARD W DARLING	9777	(*)			(*)		
LEONA MEAT PLANT INC	9784	(*)	(*)	(*)		(*)	
J & B MEAT PLANT	9785	(*)	(*)	(*)		(*)	
STEPNIAK BEEF	9786	(*)	(*)	(*)			
MUSSERS INC	9783	(*)	(*)	(*)	(*)	(*)	
YOUNDT BROS	9789	(*)	(*)			(*)	
C H THOMAS SONS INC	9790	(*)				(*)	
AMOS STOLTZFUS	9792	(*)		(*)		(*)	
LOCUSTDALE PACKING CO	9799	(*)	(*)	(*)	(*)	(*)	
ALLEN I ROMBERGER	9800	(*)	(*)				
PEZZNER BROTHERS INC	9808	(*)				(*)	
ROBZEN'S INC	9809	(*)	(*)				
HOCH'S FARMS & MARKETS INC	9810	(*)					
TWIN PINE FARM	9814	(*)	(*)			(*)	
WINTER GARDENS ABATTOIR	9815	(*)	(*)	(*)		(*)	
J A HARGLEROAD & CO	9816	(*)	(*)	(*)	(*)	(*)	
THE COUNTRY BUTCHER SHOP	9819	(*)	(*)	(*)	(*)	(*)	
HERVITZ PACKING CO	9821	(*)	(*)				
LAUDERMILCH MEATS	9823	(*)				(*)	
PHARES A LONGNECKER & SONS INC	9827	(*)					
CLOVER MEAT PACKING INC	9828	(*)	(*)			(*)	
N S TROUTMAN & SONS	9832	(*)	(*)			(*)	
MIKE LEVCHIK	9834	(*)	(*)	(*)		(*)	
GLENN J BEASTON	9835	(*)	(*)			(*)	
NORMAN ZIMMERMAN & SON	9836	(*)					
GEORGE E GARNER	9838	(*)	(*)	(*)		(*)	
GLENN E HENRY	9841	(*)	(*)	(*)	(*)	(*)	
FRANCIS BONANNO PACKING CO	9842	(*)	(*)	(*)	(*)	(*)	
HUGHEY (BOBBY) WEYANDT III	9843	(*)	(*)	(*)	(*)	(*)	
PENNSYLVANIA STATE UNIV MEATS LABORATORY	9844	(*)	(*)	(*)		(*)	
CHARLES YOUNDT & SONS	9846	(*)				(*)	
FENTONS MEATS	9847	(*)	(*)	(*)		(*)	
COUNTRY BUTCHER SHOP	9848	(*)	(*)	(*)		(*)	
PALACE MARKET INC	9880	(*)	(*)			(*)	
KERN COUNTY SHERIFF	9891	(*)				(*)	
CALIFORNIA STATE UNIV FRESNO MEAT LABORATORY	9892	(*)	(*)	(*)		(*)	
CAVALIER EXPORT CO	E 9910						(*)
COMMITTEE ON MASONIC HOMES	9913	(*)	(*)			(*)	
DONALD M SEIDLE	9921	(*)	(*)	(*)		(*)	
NEWPORT PACKING CO INC	9926	(*)	(*)	(*)	(*)		
METZGER MEAT	9927	(*)	(*)	(*)		(*)	
SUGAR TREE MEAT PROCESSING INC	9943	(*)				(*)	
SCHALLER'S SLAUGHTERHOUSE	9955	(*)	(*)	(*)	(*)		
NASER PACKING CO	9958	(*)	(*)	(*)	(*)	(*)	
JOHN M BONHAM & SONS	9971	(*)	(*)	(*)		(*)	
AMOS BAWELL & SONS	9974	(*)	(*)	(*)		(*)	
MINOR ACRES PACKING CO	9983	(*)	(*)	(*)		(*)	
BECK-WHITE SLAUGHTER & PROCESSING	12600	(*)				(*)	
BARTOW MEAT PROC	12601	(*)				(*)	

BILLING CODE 3410-37-C

Done at Washington, D.C., on: April 11, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-11923 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-37-M

DEPARTMENT OF AGRUCULTURE

Food Safety and Quality Service

Nitrates and Nitrites in Meat Products; Extension of Time for Submission of Data

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice—extension of time.

SUMMARY: On October 18, 1977, the Department published in the **Federal Register** (42 FR 55626–55627) a notice concerning data from the industry demonstrating whether the use of nitrates and/or nitrites in the production of cured products results in the formation of carcinogenic nitrosamines during ordinary processing and/or preparation for eating. The April 18, 1979, deadline for submitting such data for pickle cured products is hereby extended 90 days. The remaining time periods allotted for submitting such data for other cured products are not affected by this document.

DATES: The period for submission of the data regarding the use of nitrates and nitrites in pickle cured products is extended to July 17, 1979.

ADDRESS: Send the information to: Executive Secretariat, Attn: Annie Johnson, Room 3807, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 202, Annex, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: The Department has determined it necessary to extend the period of time for industry to submit data concerning the use of nitrates and nitrites in pickle cured products. Analysis by Thermal Energy Analyzers is essential to the development of this data. However, because of the limited number of Thermal Energy Analyzers and particularly heavy usage of them for testing bacon pursuant to requests for data (42 FR 55626, 55627, 62512), and pursuant to the Department's subsequent bacon monitoring program, there has not been sufficient opportunitty for completion of testing for pickle cured products. It appears that this testing can be completed by July 17, 1979.

Since the Department is interested in receiving factural and meaningful data, these circumstances are considered sufficient justification for an extension of time originally allotted for submitting data concerning pickle cured products. In all other respects, the October 18, 1977, notice shall continue to apply.

Done at Washington, D.C., on April 12, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-12011 Filed 4-16-79; 8:45 am]

BILLING CODE 3410-37-M

CIVIL AERONAUTICS BOARD

Southwest Airlines Automatic Market Entry Investigation; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled proceeding will be held on May 2, 1979, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

For information concerning the issues involved and other details of this case, interested persons are referred to Civil Aeronautics Board Order 79–3–150 adopted March 22, 1979, instituting this proceeding, the report of the prehearing conferences served on April 12, 1979, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., April 12, 1979.

William A. Kane, Jr.,

Administrative Law Judge.

[Docket 34562]

[FR Doc. 79-11893 Filed 4-16-79; 8:45 am]

BILLING CODE 6320-01-M

United Air Lines, Inc.; Extension of Children's Fare Discount to Children Under 18; Complaint Deferred

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 6th day of April, 1979.

By tariff revision [1] marked to become effective May 1, 1979, United Air Lines, Inc. (United) proposes to extend the 50 percent discount now available to children under 12 to children under 18 who meet the "Freedom" and "Super-Saver" discount fare travel conditions, and are accompanied by an adult. Since, at the same time United is proposing to reduce the "Freedom" discount fare five percentage points and the "Super Saver" discounts by 10 percentage points, it desires to minimize the impact of the changes on family unit travel by extending the 50 percent children's fare to children under 18 years of age. The carrier states that unlike American Airlines' "spouse" fare, which the Board recently rejected (Order 79–1–72), United's proposal does not introduce a new "status" category, but merely changes a questionable definition of the people eligible for an existing "status" fare.

Western Air Lines, Inc. (Western) has filed a complaint againts the proposal alleging that contrary to United's assertions, the "children under 12" status is firmly fixed through historical practice, and secondly, major questions are raised as to the discriminatory nature of a fare that will permit anyone 17 and under to travel at a 50 percent reduced rate, while this same opportunity is not available to those 18 and over.

In answer to Western's complaint, United asserts, that there is longer statutory authority for the Board to suspend tariff filings that are within the suspend free zone, and that its proposed fare which affords a 50 percent reduction, is within that zone. United urges that carriers must be free to propose changes in the pre-existing fare structure to meet the needs of the public in the less regulated future.

We will defer action on Western's complaint until completion of a thorough inquiry into price discrimination and status fares which should be instituted in the near future; a draft policy statement prepared by our staff on this subject was presented and discussed at our Sunshine Meeting of March 8, 1979. While we recognize that this fare can reasonably be described as a status fare, it can also be reasonably characterized as a move to make a presently discriminatory fare, the children's fare, less so. As such, the proposed fare is not so violative of existing case law as to merit rejection. Furthermore, United is correct that a proposed fare within the zone established by section 1002 (d)(4)(B) of the Act, as is this one, may not be suspended on grounds of undue discrimination. We have concluded, therefore, that the fare should be permitted to become effective. Western is free to renew its challenge to this fare in the context of the coming proceeding.

[1] Revisions to Airline Tariff Publishing Company, Agent, Tariff C.A.B. Nos. 142, 258 and 259. American Airlines, Inc. has filed to match United's proposal.

Accordingly, pursuant to sections 102, 204,(a), 403, 404, and 1002 of the Federal Aviation Act of 1958,

1. We defer the complaint in Docket 34827 as indicated above; and

2. We will serve a copy of this order upon Western Air Lines, Inc., and United Air Lines, Inc.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.[2]

Phyllis T. Kaylor,
Secretary.

[Order 79-4-56; Docket 34827]
[FR Doc. 79-11804 Filed 4-16-79; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

1980 Census Neighborhood Statistics Program

The Acting Director of the Bureau of the Census is issuing below a statement of the Bureau's plans for a 1980 census program on statistics for neighborhoods, including preliminary criteria for participation in the program. Additional information may be obtained from the Director, Bureau of the Census, Washington, D.C. 20233. Comments and recommendations concerning the neighborhood statistics program should be sent to the same address. Comments received on or before June 18, 1979, will be given consideration in determination of final program participation criteria.

1980 Census Neighborhood Statistics Program

The Bureau of the Census is developing a 1980 census program on statistics for neighborhoods for municipalities with officially recognized areas (frequently called "neighborhoods") which involve citizen participation. For each such municipality that joins this program, the Bureau will produce for the recognized neighborhoods a set of data similar to the statistics for census tracts in the 1970 *Census Tracts* reports, Series PHC(1). (Census tract data will again be produced in 1980.) The following four characteristics of neighborhood systems are being considered as criteria for participation:

1. Official recognition by the municipality.
2. Complete citywide coverage.
3. Nonoverlapping boundaries.
4. Elected or appointed advisory representatives from each neighborhood, or a similar mechanism by which the residents in these neighborhoods can make known to the city officials their concerns about issues that affect their specific areas.

As the program has evolved, the Bureau of the Census has obtained input from many sources, including the National Conference of Neighborhood Councils, the National Association of Neighborhoods, the President's National Commission on Neighborhoods, and Federal agencies such as the Department of Housing and Urban Development. The Bureau also has had extensive contacts with local officials and neighborhood leaders, many of whom have supplied descriptions of their neighborhood systems. Because of this input, the Bureau is considering a revision of preliminary criterion 2, above, to permit participation in this program by municipalities which have active neighborhood organizations covering a part of the municipal area but not the entire locality. In such situations, summary data would be produced for a "balance of city" which would include all areas within the municipality that are not part of a recognized neighborhood.

Within the context of this program, the focus of the term "municipality" is on incorporated places. There are indications, however, that legally recognized neighborhoods of the type described here exist outside incorporated municipalities. Such areas would be considered for participation on an individual basis. However, it should be noted that the data needs of many of these areas will be met through other types of small-area data to be produced from the 1980 census. For instance, the Bureau will provide, statistics for individual blocks in blocked areas, which are: (a) Each urbanized area (currently defined on the basis of a city with a census population of at least 50,000 or a city of at least 25,000 together with adjacent census places summing to a total of at least 50,000, plus any adjacent densely settled areas); (b) outside urbanized areas, each incorporated place with a current population of 10,000 or more; and (c) other areas which entered into a contract with the Bureau to have the 1980 census taken on a block-by-block basis, at local expense. Block statistics will include basic population and housing information from items asked of all persons (100-percent data) but not data from the more extensive set of questions (on education, employment, income, etc.) which will be asked of only a sample of the Nation's households. Summary statistics compiled from this more extensive set of sample questions will be available for enumeration districts (the administrative units used for collecting census information in sparsely settled areas) and for block groups (the equivalent of enumeration districts inside blocked areas). These areas averaged 800 and 1,000 population, respectively, in 1970.

The neighborhood statistics program was announced and described in the October 1977 issue of *1980 Census Update*, a quarterly newsletter issued by the Bureau of the Census, and more information was given in the July 1978 issue of Update. In addition, a number of Federal and private organizations have carried articles about this program in their newsletters. A further effort to obtain input from potential program participants was made in January 1979 through an informational mailing on the program to the mayor (or similar highest elected official) of each incorporated municipality with 10,000 or more population. Similar material has been mailed to a large number of interested individuals and groups.

This article in the **Federal Register** constitutes both a formal announcement of the preliminary criteria for program participation and a further request for comments and suggestions concerning those criteria. Following a review of the additional information resulting from this article and other contacts, the Bureau will develop final detailed program criteria which will be issued in the **Federal Register** in the summer of 1979. This timing will allow almost 1½ years for neighborhood organizations and municipalities to request participation in the program before the designated deadline of December 31, 1980.

Once the criteria are determined, the program will proceed along the following lines. Participation will be initiated by a written request from either the chief elected official of the municipality or an appropriate representative of the neighborhood system (e.g., central neighborhood council). The Bureau will accept such requests through December 31, 1980, as noted above. Beginning in early 1981, for areas whose compliance with the program criteria has been determined, the Bureau will provide to each requester 1980 census maps and other geographic information along will instructions for preparing a "neighborhood block equivalency list." In that operation, the requester will "define" each neighborhood in terms of census geographic areas which, for the most part, will be census blocks. For blocks cut by neighborhood boundaries, the requester will determine the neighborhood to which the entire block

[2] All Members concurred.

will be allocated since individual blocks cannot be split. The Bureau will review the block equivalency list; however, the local requester will be responsible for its accuracy and for the resolution of any omissions or duplications that it may contain. Dealing with statistical inaccuracies that may result from undiscovered errors, in coding also will be a local responsibility.

The cost of the work performed by the Bureau of the Census in connection with this program will be borne by the Bureau with no charge to the particpants. The cost of program particpation to the municipality or central neighborhood council will be minimal; i.e., making the written request, preparing the neighborhood block equivalency list, and providing for such local dissemination of the statistics as the requester deems desirable.

At the completion of the tabulation process, a full set of tables containing the statistics for all neighborhoods within the locality will be provided without charge to the requesting municipality or central neighborhood council. The tables will be accompanied by an appropriate text defining the subject terminology and the statistical limitations of the data. Maps showing neighborhood boundaries will *not* be available from the Bureau of the Census; any map preparation or dissemination in relation to this program will be a local responsibility. Alternative ways for further dissemination of the data are under review at present; in any event, the neighborhood data will be publicly available at reasonable cost. In addition, the Bureau will prepare guides on the use of these data, develop case studies to illustrate various ways of applying them to neighborhood problems, and include sessions in data user workshops to familiarize potential users of the neighborhood statistics with the data.

Dated: April 12, 1979.

Robert L. Hagan,

Acting Director Bureau of the Census.

[FR Doc. 79-11856 Filed 4-16-79; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration

City of Little Rock, Ark.; Intent To Prepare Environmental Impact Statement

Notice is hereby given that, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Economic Development Adminstration (EDA), of the U.S. Department of Commerce, and the Ozarks Regional Commission will prepare an environmental impact statement (EIS) on the proposed Civic/Convention Center Complex in Little Rock, Arkansas.

The proposal involves site development and construction of a Civic/Center Complex currently estimated to cost $15 million. The project is proposed to be located in Little Rock, Arkansas in an area where numerous other public and private investments totaling an additonal approximate cost of $83,000,000 are planned.

Alternatives to the proposed Civic/Convention Center will be considered, including alternate locations and alternate projects having similar economic and community benefits. Pursuant to CEQ regulations, a scoping meeting will be held near the proposed project site to both inform interested parties and to solicit their comments. A notice will be published in the local newspaper prior to the meeting indicating the time, date, and location of the scoping meeting.

Comments and questions regarding the Convention Center, the EIS, or the time and place of the scoping meeting should be made to Mr. John W. Faris, EIS Coordinator, Economic Development Administration, U.S. Department of Commerce, 600 American Bank Tower, Austin Texas 78701, Telephone: (512) 397-5849.

Dated: April 10, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-11860 Filed 4-16-79; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmosperic Administration

Oregon Department of Fish and Wildlife; Correction

On April 2, 1979, Notice was given that the Oregon Department of Fish And Wildlife, Marine Science Drive, Bldg. No. 3, Newport, Oregon 97365, had applied for a scientific research permit under the Marine Mammal Protection Act of 1972.

The notice stated that take activities will probably involve harassment. This harassment by sonic devices such as killer whale sounds will involve up to 200–300 harbor seals and 100 northern sea lions per year for three years.

Robert B. Brumsted,

Acting Director, Office of Marine Mammals/Endangered Species, National Marine Fisheries Service

April 12, 1979.

[FR Doc. 79-11885 Filed 4-16-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974; Proposed New System of Records

The purpose of this notice is to propose a new Privacy Act System of Records entitled: Work Schedule Study Interview Records, COMMERCE/DEPT-23. This action is taken pursuant to 5 U.S.C. 552a(e)(4) and (11), Section 3 of the Privacy Act of 1974 (Pub L. 93-579, 88 Stat. 1896).

George Washington University's Family Impact Seminar is conducting a study entitled, "The Effects of Work Schedules on Families." The Department has awarded a contract to the University under which a small group of the Department's Maritime Administration and Economic Development Administration employees and their families will be interviewed on a voluntary basis. The interviews are designed to allow in-depth exploration of the ways in which work affects family life.

The purpose of this proposed system DEPT-23 is to safeguard the collection and maintenance of personal data during and after these interviews. The George Washington University will publish a report of the finding of this study with commentaries on the process of doing family impact analysis. The report will not contain any individually identifiable data. The personal identifying information in the system will be deleted by December, 1981. The raw data, absent all personal identifiers, will be maintained indefinitely.

A complete description of the system is set forth below.

As required by the Privacy Act, the Commerce Department submitted a New System Report dated April 6, 1979 to the Congress and to the Office of Management and Budget.

Although the Act requires the opportunity for public comment only on the proposed new routine uses, comments regarding any portion of this notice will be given due consideration before final publication. Any interested person may submit written data, views, or arguments to the Assistant Secretary for Administration (Attention:

Information Management Division, Room 5319) U.S. Department of Commerce, 14th & E Streets, NW., Washington, D.C. 20230, any time on or before May 17, 1979. All of these comments will be available, as received, for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday thorugh Friday (except holidays).

This system of records will become effective May 17, 1979, provided the Department's request for a waiver of the 60-day advance notice requirement is granted by the Office of Management and Budget, or unless the Department notices to the contrary.

Authority: 5 U.S.C. 552a(e)(4) and (11), sec. 3 of the Privacy Act of the 1974 (Publ L. 93–579, 88 Stat. 1896).

Dated: April 5, 1979.

Guy W. Chamberlin,
Acting Assistant Secretary for Administration.

COMMERCE/DEPT–23

SYSTEM NAME:

Work Schedule Study Interview Records—COMMERCE/DEPT–23.

SYSTEM LOCATION:

George Washington University Family Impact Seminar, 1001 Connecticut Avenue, Suite 838, Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MARAD and EDA employees, their spouses, and other family members, interviewed on a voluntary basis as part of the work schedule study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Age, sex, marital status, ages and number of children, educational background, ethnic heritage, degree of job satisfaction, attitudes and feelings toward work and work schedules, leisure activities, portion of family income derived from empolyee's income; information on the handling of household chores, time spent taking care of or doing things with the children, information pertaining to flexitime schedule, and notes from interviews pertaining to the effect of employment on family life.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 33 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

George Washington University's Family Impact Seminar employees will use this information to prepare the report of the study entitled, "The Effects of Work Schedules on Families."

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy in file folders and magnetic tape.

RETRIEVABILITY:

By identification number cross-referenced with employees' names on master list until December 1981.

SAFEGUARDS:

Records are located in locked cabinets or in secured rooms or premises with access limited to those whose official duties require access. Only 2 George Washington University employees will have access.

RETENTION AND DISPOSAL:

Identifying information will be destroyed on or before December 1981.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Work Schedules Study, Family Impact Seminar, George Washington University, 1001 Connecticut Avenue, Suite 838, Washington, D.C. 20036.

NOTIFICATION PROCEDURE:

For MARAD records, information may be obtained from Secretary, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20230;

For EDA records, information may be obtained from Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to same address as stated in the noticification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information.

[FR Doc. 79–11853 Filed 4–16–79; 8:45 am]

BILLING CODE 3510–19–M

DEPARTMENT OF DEFENSE

Department of the Army

Below Red River Area, Louisiana, Project; Draft Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)

SUMMARY: 1. *Description of Action.* The recommended levee plan includes 10.4 miles of new levee, upgrading the existing Moncla to Lake Long levee on Red River, a floodgate and 500-cubic-foot-per-second pumping plant draining into Red River, about 1.5 miles of interior channel to route drainage to the outlets, and minor structures as needed to facilitate drainage from low areas.

2. *Reasonable Alternatives.* No action, permanent evacuation, floodproofing, and three levee alignments other than the recommended levee plan were evaluated.

3. *Description of Scoping Process.*

a. *Public involvement.* Coordination has been maintained with the general public and with interested agencies throughout formulation and development of the Below Red River Area Project plan. A total of eight public meetings were held between September 1975 and April 1978.

b. *Issues analyzed in the EIS.* Impacts of the project on water quality, recreational opportunities, aquatic ecosystem, terrestrial ecosystem, endangered species, socioeconomic elements, and archeological sites.

c. *Assignments for input into the EIS.* No specific assignments other than Corps of Engineers as lead agency.

d. *Environmental review and consulation requirement.* Review by Federal, state, and local agencies and interested groups and individuals.

4. *Scoping Meeting Schedule.* A scoping meeting will not be held.

5. *Date DEIS will be Available to Public.* May 1979.

ADDRESS: Questions about DEIS can be answered by: Mr. E. Eugene Parks, U.S. Army Corps of Engineers, Vicksburg District, Environmental Analysis Branch, P.O. Box 60, Vicksburg, Mississippi 39180, Phone: FTS 542–5438. Commerical 636–1311, Ext. 5438.

Dated: April 5, 1979.

John H. Moellering,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79–11821 Filed 4–16–79; 8:45 am]

BILLING CODE 3710–GX–M

Holes Creek, West Carrollton, Ohio; Draft Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: Local flood protection alternatives have been considered in the vicinity of West Carrollton to alleviate headwater flooding from Holes Creek, a tributary to the Miami River. Alternatives under consideration include channel improvement for the lower 1.4 miles of the stream, 4,100 feet of levees and floodwalls, and nonstructual measures.

A Plan Formulation Public Meeting was recently held, 14 December 1978, in West Carrollton. This meeting constituted a part of the scoping process as the alternatives and preliminary impacts and evaluations were presented to the public and affected agencies for their consideration. Views and comments were solicited and obtained. The primary environmental issue expressed concerned impacts on the existing fish and wildlife of the area. The scoping process will continue with invitations for comments to be sent in April 1979 to affected agencies and those organizations and individuals that have expressed an interest in the environmental or cultural resources. The aforementioned meeting and coordination efforts are expected to adequately define the scope of issues to be addressed in the DEIS. No specific meeting for scoping purposes will be held. As presently scheduled, the DEIS will be distributed for review in September 1979.

ADDRESS: Questions regarding the proposed action, the Draft Environmental Impact Statement or the scoping process, should be directed to Thomas P. Nack, Colonel, Corps of Engineers, 600 Federal Place, P.O. Box 59, Louisville, Kentucky 40201. Telephone: (502) 582–5601.

By Authority of the Secretary of the Army.

Dated: April 9, 1979.

Thomas P. Nack,

Colonel, CE, District Engineer.

[FR Doc. 79–11823 Filed 4–16–79; 8:45 am]

BILLING CODE 3710–GF–M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is tentatively scheduled to be held from 9:30 a.m. to 5 p.m., April 19 and 20, 1979 in OSD Conference Room 1E801 #1, The Pentagon. Meeting sessions will be open to the public.

This special meeting has been called by the Chairperson, without the normal 15–30 day prior notification requirement, in order to finalize and follow-through on priority items of business that were introduced during the Committee's closing business session of the formal Spring Meeting, April 5, 1979 in Washington, D.C. This meeting will not negate the normal Executive Committee Meeting held during June or July preparatory to the formal DACOWITS Fall Meeting.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Lt. Col. Barbara J. Roy, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs and Logistics), Room 3D322, The Pentagon, Washington, D.C. 20301, telephone 202–697–5655 no later than April 18, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

April 12, 1979.

[FR Doc. 79–11879 Filed 4–16–79; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on High Energy Lasers; Meeting

The Defense Science Board Task Force on High Energy Lasers will meet in closed session on 17–18 May 1979 in Washington, DC. The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Defense Science Board Task Force on High Energy Lasers has been scheduled for 17–18 May 1979 to review specific aspects of laser devices, pointing and tracking, and optics technology. The Task Force will focus on major technical issues that may limit the performance characteristics and potential utility of high energy lasers to missions of interest to the Department of Defense.

In accordance with 5 U.S.C. App. I 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,

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

April 12, 1979.

[FR Doc. 79–11880 Filed 4–16–79; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF ENERGY

Intergovernmental and Institutional Relations; Consumer Affairs Advisory Committee Subcommittees; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given that the Consumer Affairs Advisory Committee Subcommittees will meet Thursday, May 3, 1979, in Rooms 8E069 and 8E083, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. at the time indicated below.

The objective of the subcommittees is to make recommednations to the parent Committee with respect to matters concerning consumer aspects of DOE policies and programs.

The tentative agenda and schedule of meetings is as follows:

Consumers' Right to Appropriate Energy Sources

9:00 a.m.—12:00, Room 8E083

Agenda

Consumer Coop Bank

Funded Public Participation of Consumer Organizations

9:00 a.m.—12:00, Room 8E069

Agenda

Assess funding needs of Consumer Organizations
Status of PURPA and ECPA Financial Assistance rules

Consumers' Right to Heat and Light

1:30 p.m.—4:00, Room 8E083

Agenda

Fuel Oil Marketing Advisory Committee Working Paper
Impact of Deregulation on Consumers
DOE/HUD Block Grant Workshops

Oversight of DOE

1:30 p.m.—4:00, Room 8E069

Agenda

Follow-up on DOE Procurement Issues

The subcommittee meetings are open to the public. The chairperson of each subcommittee is empowered to conduct the meeting in a fashion that will, in his/her judgment, facilitate the orderly

conduct of business. Any member of the public who wishes to file a written statement with a subcommittee concerning items on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements concerning items on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management (202) 252–5187, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Transcripts of the meetings will be available for public review and copying at the Freedom of Information Public Reading Room, room GA152, Forrestal Building, 1000 Independence avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter. an Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C. on April 11, 1979.

Tina C. Hobson,

Advisory Committee Management Officer.

[FR Doc. 79–11809 Filed 4–16–79 8:45 am]

BILLING CODE 6450–01–M

Intergovernmental and Institutional Relations, Consumer Affairs Advisory Committee, Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given that consumer Affairs Advisory Committee will meet Friday, May 4, 1979, in Room 8E069, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., from 9:00 a.m. to approximately 4:00 p.m.

The purpose of the Committee is to provide the Secretary of Energy with diversified expert advice from qualified individuals relating to the identification and evaluation of the impact of proposed or existing energy policies and programs on consumers, the identification of areas where new policy initiatives or program change is needed, and planning, developing, and implementing equitable energy policies and programs.

The tentative agenda for the meeting is as follows:

1. Status Report
2. President's Energy Message
3. International Year of the Child
4. Impact of Iranian Response Plan
5. Energy Assistance Program for Low and Moderate Income Citizens
6. Subcommittee Reports
7. Public Comment (10 Minute Rule)

The meeting is open to the public. The Chairwoman of the Committee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee concerning items on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements concerning items on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management (202) 252–5187, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA152, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter. An Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C. on April 11, 1979.

Tina C. Hobson,

Advisory Committee Management Officer.

[FR Doc. 79–11810 Filed 4–16–79; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Ad Hoc Committee on Energy Statistics; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770), notice is hereby given that the American Statistical Association's Ad Hoc Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Friday, May 4, 1979, at 9:00 a.m. in Room 3000A of the New Post Office Building located at 12th & Pennsylvania Avenue, N.W., Washington, D.C.

The purpose of the meeting is to enable the Energy Information Administration to utilize the American Statistical Association's Ad Hoc Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Ad Hoc Committee's studies concerning other energy statistical matters.

The tentative agenda is as follows:

1. Discussion of an energy accounting framework in consonance with the National Income and Product Accounts and with international statistics.

2. The development of standards for successive revisions to ongoing energy data series and the development of seasonal adjustment capability.

3. Review of major information systems, including the Energy Emergency Management Information System, and the Oil and Gas Information System.

4. Review of energy applied analysis models and forecasting tools and procedures to measure the degree of uncertainty inherent in EIA forecasts and analyses.

5. Discussion of an indexing system to convey the overall energy situation, similar to the Consumer Price Index or Unemployment Index.

The meeting is open to the public. Any member of the public may file a written statement with the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Kathleen B. Repass, Office of Planning and Evaluation, EIA, (202) 633–8696, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393–3253, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Subsequent to approval by the Committee, minutes and an executive summary of the meeting will be available for public review and copying at the Office of Planning and Evaluation, EIA, 12th & Pennsylvania, Ave., N.W., Room 6149, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

Issued at Washington, D.C. on April 12, 1979.

Lincoln E. Moses,

Administrator, Energy Information Administration.

[FR Doc. 79–12095 Filed 4–16–79; 10:20 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Great Lakes Gas Transmission Co.; Order Granting Request by Great Lakes Gas Transmission Co. for Extension of Time in Which To Import Volumes of Natural Gas Previously Authorized by ERA

On March 5, 1979, the Economic Regulatory Administration (ERA) issued an order granting a request by Great Lakes Gas Transmission Company (Great Lakes) for emergency authorization to import up to 3 billion cubic feet (Bcf) (84.951 Mm^3) of natural gas from Canada. The background and reasons for approval of the request are fully stated in that order (44 FR 15526, March 14, 1979). The present order is in response to a request by Great Lakes on March 14, 1979, for ERA authorization to extend the original import authorization from March 27, 1979, to April 26, 1979.

ERA has evaluated Great lakes' original application, its request for extension, and comments received in response to Federal Register notices concerning the original application and request for extension (44 FR 10863, February 23, 1979; 44 FR 19010, March 30, 1979). ERA finds that the reasons for granting the original application, including the finding that shortages of fuel oil would be partially alleviated by the Canadian gas to be imported by Great Lakes, are sufficient to warrant an extension of time; that such brief extension of time as Great Lakes has requested is reasonable, under the circumstances, to permit all of the gas previously authorized to be imported and used as contemplated in ERA's order of March 5, 1979; that approval of Great Lakes' request for extension of time will result in the importation of the same volume of natural gas, at the same price,[1] as authorized in ERA's order of March 5, 1979; and that, in view of the absence of any objections either to the original request or to the request for extension of time, approval of this request in an expedited manner is not inconsistent with the public interest.

Order

1. Ordering paragraph 1. of ERA's order of March 5, 1979, to Great Lakes Gas Transmission Company which read:

1. Great Lakes is hereby authorized to commence immediately the importation of up to 3 Bcf (84.951 Mm^3) of natural gas from Canada for a period to end no later than March 27, 1979, upon the terms and conditions outlined below.

is hereby amended to substitute "April 26, 1979" for "March 27, 1979."

2. All other terms and conditions of ERA's order of March 5, 1979, remain in effect.

3. DOE shall cause prompt notice of the issuance of this order to be published in the Federal Register and may rescind the import authority granted herein if further proceedings appear warranted and result in a determination that this authorization is inconsistent with the public interest.

Issued in Washington, D.C., April 6, 1979.

Barton R. House,

Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[ERA Docket No. 79-05-NG]

[FR Doc. 79-11804 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Although the National Energy Board of Canada has recently announced that the border price of all natural gas exported from Canada will increase from $2.16 per MMBtu to $2.30 per MMBtu effective May 1, 1979, an authorization for an extension of time to April 26, 1979, as requested by Great Lakes, will not be affected by the post-May 1, 1979, price increase.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alabama-Tennessee Natural Gas Co.; Certification of Settlement Agreement

April 11, 1979.

Take notice that on April 5, 1979, the Presiding Administrative Law Judge certified to the Commission a Stipulation and Settlement Agreement submitted in the above-referenced proceedings. The Presiding Administrative Law Judge states that the proposed settlement, if approved by this Commission, would resolve all issues presented in this proceeding except for issues concerning the rate of depreciation and the allowance for rate of return. These reserved issues will be the subject of an Initial Decision by the Presiding Administrative Law Judge.

Copies of this agreement are on file with this Commission and are available for public inspection. Any person desiring to be heard or to protest the Certified Stipulation and Agreement should file comments with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 N. Capitol Street, N.E., Washington, D.C. 20426, on or before April 20, 1979. Reply comments should be filed on or before April 30, 1979.

Lois Cashell,

Acting Secretary.

[Docket RP78-49]

[FR Doc. 79-11895 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Arkansas Louisiana Gas Company, et al.; Extension of Time

April 11, 1979.

On April 5, 1979, Texas Gas Transmission Corporation filed a motion for extension of the filing requirement of Ordering Paragraph (N) of the Commission's order of March 30, 1979. The motion states that Texas Gas is also filing for rehearing of the March 30 order and asking for a stay of Ordering Paragraph (N). Motions for extensions for the same reasons were also filed on April 10, 1979, by Southern Natural Gas Company, Panhandle Eastern Pipeline Company and Trunkline Gas Company.

Upon consideration, notice is hereby given that an extension of time is granted to and including May 1, 1979, for compliance with Ordering Paragraph (N) by all pipelines to which the Paragraph applies.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-11896 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

El Paso Natural Gas Co.; Application

April 10, 1979.

Take notice that on March 21, 1979, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-233 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities located in Pecos County, Texas, necessary for an interconnection of the pipeline systems of Applicant and Oasis Pipe Line Company (Oasis), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the location of the proposed interconnection facilities is in the vicinity of Mobil Oil Corporation's (Mobil) Waha Plant in Pecos County, Texas. Applicant further states that such interconnection would enable it to receive, for use in serving its existing interstate system customers, natural gas supplies transported by Oasis for Applicant's account which are situated remotely from Applicant's interstate system.

Applicant specifically proposes to construct and operate approximately 0.61 mile of 24-inch O.D. pipeline connecting Applicant's 12¾-inch O.D. field feeder pipeline located near the discharge side of Mobil's Waha Plant in Pecos County, Texas, to a mutually agreeable point located on Oasis' 24-inch O.D. pipeline. Additionally, states

Applicant, it proposes to install the necessary measurement and flow control devices at the Waha Receipt Point. Such facilities, in addition to certain existing facilities at the Waha Receipt Point, would enable Applicant to accept into its interstate pipeline transmission system up to 175,000 Mcf per day of natural gas, it is stated.

Applicant indicates that the proposed facilities are estimated to cost $690,394 and would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with 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.

Lois Cashell,

Acting Secretary.

[Docket CP79-233]

[FR Doc. 79-11897 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Estes Lake Association; Petition for Investigation

April 12, 1979.

Take notice that on February 23, 1979, the Estes Lake Association (Petitioner), a non-profit corporation, petitioned the Commission to investigate pursuant to section 4(g) of the Federal Power Act [1] the use of the Mousam River for hydroelectric power production by unlicensed private parties. Petitioner alleges that the York Corporation generates power by operating hydroelectric facilities in a manner which is not consistent with a comprehensive plan for the use of the Mousam River and associated waters. Petitioner further alleges that the Mousam River is a navigable waterway which flows through York County, Maine.

Petitioner consists of property owners whose lands are located adjacent to Estes Lake, a body of water impounded by a dam which is owned and operated by the York Corporation and which obstructs the natural flow of the Mousam River. Petitioner states that Estes Lake supports the ground water table utilized by a majority of its members as the primary source of water; that the York Corporation unreasonably draws down the water levels of Ester Lake for the purpose of generating electrical power; that these drawdowns adversely affect the primary source of water for many of its members; and that the drawdown of Estes Lake adversely affects recreational activities and property values, and creates a potential health hazard.

Anyone desiring to be heard or to make any protest about this petition should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR 1.10 or 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest or petition to intervene must be filed on or before June 11, 1979. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426.

The petition is on file with the Commission and is available for public inspection.

Lois Cashell,

Acting Secretary.

[Docket EL79-9]

[FR Doc. 79-11898 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Michigan Wisconsin Pipe Line Co.; Tariff Changes Pursuant to Order Approving Stipulation and Agreement

April 11, 1979.

On April 9, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing revised tariff sheets to its F.E.R.C. Gas Tariff to be effective March 30, 1979 as follows:

Volume No. 1

Original Volume No. 1 of Michigan Wisconsin's F.E.R.C. Gas Tariff.

First Revised Volume No. 2

Substitute Eighth Revised Sheet Nos. 92, 110, 129 and 130.

Substitute Seventh Revised Sheet Nos. 141, 142 and 171.

Substitute Fifth Revised Sheet Nos. 214 and 215.

Substitute Fourth Revised Sheet Nos. 231, 232, 297, 315 and 339.

Substitute Third Revised Sheet Nos. 420 and 421.

Substitute Original Sheet Nos. 597, 612 and 619.

Michigan Wisconsin states that these tariff sheets are filed in accordance with the Commission's order dated March 30, 1979 approving the Stipulation and Agreement at Docket No. RP77-60. Michigan Wisconsin further states that copies of the filing have been mailed to its customers and all interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 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 filing are on file

with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[Docket RP77-60]

[FR Doc. 79-11899 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Montana-Dakota Utilities Co.; Application

April 11, 1979

Take notice that on April 5, 1979, Montana-Dakota Utilities Co. (Applicant), a corporation organized under the laws of the State of Delaware and qualified to do business in the States of Minnesota, Montana, North Dakota, South Dakota and Wyoming, with its principal business office at Bismarck, North Dakota, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, for authority to finance the construction of the Applicant's 20%undivided interest in certain pollution control facilities at Unit No. 1 of the Coyote Station, now under construction near Beulah, North Dakota, through lease agreements with Mercer County, North Dakota, which provided for the issuance of up to $20,000,000 principal amount of pollution control revenue bonds by the County. The Bonds will bear interest at a rate to be determined and will be guaranteed by the Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10.) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Lois Cashell,

Acting Secretary.

[Docket ES79-36]

[FR Doc. 79-11900 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Northwestern Public Service Co.; Application

April 12, 1979.

Take notice that on April 4, 1979, the Northwestern Public Service Company (Applicant) filed an application with the Commission, pursuant to Section 204 of the Act, seeking authorization to issue and to renew or extend the maturity of promissory notes and commercial paper to evidence short-term borrowings as needed for the Applicant's business from time to time, provided that the aggregate principal amount of such notes outstanding at any one time shall not exceed $25 million. The notes will be issued through the period ending December 31, 1981, with maturities not to exceed 360 days.

The Applicant is incorporated under the laws of the State of Delaware, with its principal business office at Huron, South Dakota, and is qualified to do business as a foreign corporation in the States of Iowa, North Dakota and South Dakota.

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 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 May 4, 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.

Lois Cashell,

Acting Secretary.

[Docket ES79-35]

[FR Doc. 79-11901 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Public Service Co. of Indiana, Inc.; Tariff Change

April 11, 1979.

Take notice that Public Service Company of Indiana, Inc. on March 30, 1978, tendered for filing pursuant to the Service Agreement, between Clark County Rural Electric Membership Corporation and Public Service Company of Indiana, Inc. a Third Supplemental Agreement.

Said Supplemental Agreement provides for two new delivery points designated as the Henryville delivery point and the New Albany—North delivery point. Service will commence at each of the two delivery ponts sometime in the future.

A copy of the filing was served upon Clark County Rural Electric Membership Corporation.

Any person desiring to be heard or to protest said filing should file a petition to intervenue or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 should be filed on or before May 4, 1979. Protests will be considered by the Commission 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 the filing are available for public inspection at the Federal Energy Regulatory Commission.

Lois Cashell,

Acting Secretary.

[Docket ER79-293]

[FR Doc. 79-11902 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

Town of Jonesboro; Application for Preliminary Permit

April 10, 1979.

Take notice that on February 16, 1979, the Town of Jonesboro, Louisiana, filed an application for preliminary permit [pursuant to the Federal Power Act, 16 USC, Section 791(a)–825(r)] for proposed Project No. 2910 to be known as the Red River Lock and Dam No. 5 Project, located on the Red River in Red River Parish, Louisiana. The project would be located on U.S. lands administered by the Corps of Engineers and would affect navigable waters of the United States.

Purpose of Project—The power would be used by the Town of Jonesboro in meeting its load requirements with any surplus power being sold or exchanged with other utilities in the area.

Proposed Scope and Cost of Studies Under Permit—The work proposed under this preliminary permit would include preliminary designs, economic analysis, preparation of preliminary engineering plans, study of environmental assessment and, in coordination with the Corps of Engineers, a study of the plans and operation of the proposed Lock and Dam No. 5. The work woud be coordinated with the Corps investigations already in progress for construction of the proposed Lock and Dam No. 5 as part of the development of the Red River

Waterway Project. Based on results of the studies conducted during the preliminary permit, a decision would be made by the Applicant whether to proceed with more detailed studies leading to the preparation of plans and specifications for the construction of the project and the filing of an application for license. Applicant estimated that the cost of the work to be performed under this preliminary permit would range from $10,000 to $50,000.

Project Description—The project would be operated as run-of-the-river and would consist of: (1) a powerplant built integrally with, or adjacent to, the proposed Corps Lock and Dam facilities; (2) 1 to 4 bulb or tube turbine/generators having a total installed capacity of 25 MW and having an average annual generation of 150,000,000 kWh. Power generated by the project would be transmitted to the Town's service area by transmission lines owned by other utilities.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license. In this instance, the Applicant seeks a 36-month permit.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permits. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests and Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission Rules of Practice and Procedure, 18 CFR, Section 1.8 or Section 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before June 11, 1979. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois Cashell,
Acting Secretary.

[Project No. 2910]
[FR Doc. 79-11903 Filed 4-16-79; 8:45 am]
BILLING CODE 6450-01-M

Tucson Gas & Electric Co.; Filing of Sale Agreement

April 11, 1979.

Take notice that Tucson Gas & Electric Company ("Tucson") on April 9, 1979, tendered for filing a 1979 Power Sale Agreement (the "Agreement") dated March 2, 1979, between Tucson and the United States of America, Department of Energy, Western Area Power Administration ("United States"). Copies of the filing were served upon United States on April 6, 1979.

Any person desiring to be heard or to make application with reference to said Agreement should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 4, 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 Cashell,
Acting Secretary.

[Docket ER79-292]
[FR Doc. 79-11904 Filed 4-16-79; 8:45 am]
BILLING CODE 6450-01-M

Upper Peninsula Power Co.; Application

April 11, 1979.

Take notice that on April 9, 1979, Upper Peninsula Power Company tendered for filing an Amendment to its Leased Capacity Agreement with Cliffs Electric Service Company.

The purpose of the Amendment is to make certain technical modifications to the Leased Capacity Agreement made necessary by the Commission's recent acceptance for filing of the 1978 Power Contract and the 1978 Basic Agreement.

Waiver of the Commission's notice requirements is requested so that the Amendment may become effective January 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10. All such petitions or protest should be filed on or before May 4, 1979. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring 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.

Lois Cashell,
Acting Secretary.

[Docket ER79-294]
[FR Doc. 79-11905 Filed 4-16-79; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration

Order Confirming and Approving an Extension of Interim Rates for the Central Valley Project

AGENCY: Department of Energy, Western Area Power Administration (WAPA).

ACTION: Notice of an extension of interim rates.

SUMMARY: The accompanying Rate Order No. WAPA-1 (which includes Rate Schedules CV-F3R and CV-P2R) confirms and approves on an interim basis, effective May 25, 1979, an extension of the interim rates for power marketed by the Western Area Power Administration from the Central Valley Project. This extension is needed so as to provide sufficient time to develop, propose, approve, and implement full payout rates.

DATES: The extension of the interim rates shall become effective May 25, 1979, and remain in effect on an interim basis until replaced by other rates, but not beyond October 31, 1979.

FOR FURTHER INFORMATION CONTACT: Gordon R. Estes, Area Manager, Sacramento Area Office, Western Area Power Administration, Department of

Energy, 2800 Cottage Way, Sacramento, California 95825, (916) 484–4251.

James A. Braxdale, Office of Power Marketing Coordination, Resource Applications, Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, DC 20461 (202) 633–8338.

SUPPLEMENTARY INFORMATION: The Order establishing the interim rates for the Central Valley Project in California was issued March 20, 1978, published in 43 F.R. 12361 (March 24, 1978), and titled, "Order Establishing Interim Rates (ERA Docket No. WAPA 78–1)." The effective date of the interim rates, as established by that Order, was May 25, 1978, and the rates expire on May 24, 1979.

Issued in Washington, DC, March 31, 1979.

George S. McIsaac,
Assistant Secretary, Resource Applications.

Department of Energy, Assistant Secretary for Resource Applications

Order Confirming and Approving an Extension of Interim Rates

March 31, 1979

In the matter of: Western Area Power Administration—Central Valley Project Power Rates, (Rate Order No. WAPA–1).

Pursuant to Section 302(a) of the Department of Energy Organization Act, Public Law 95–91, the power marketing functions of the Secretary of the Interior, under the Reclamation Act of 1902, 43 U.S.C. 372 et seq., as amended and supplemented by subsequent enactments, particularly by Section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to devleop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary.

BACKGROUND

On September 12, 1977, the Department of the Interior announced a tentative rate adjustment for power marketed by the Bureau of Reclamation from the Central Valley Project, 42 FR 46619 (September 16, 1977). Interested persons were invited to participate in public forums and to submit written comments relative to the tentative rate adjustment. Subsequently, public information and public comment forums were held.

The initial consultation and comment period was rescheduled at the customers' request to permit more time to submit comments on the tentative rate proposals. In order to accommodate their request and also partially defray the continuing large operating deficits of the Central Valley Project which adversely affect the public's interest, the Economic Regulatory Administration (ERA) of the Department of Energy, to whom the authority had been transferred to make the final decision on rates for Reclamation projects, on March 20, 1978, established for a 1-year period interim rates for all Central Valley Project customers which consisted of a $2.00/kW/mo demand charge and a 4.2 mills/kWh energy charge, 43 FR 12361 (March 24, 1978). The Order reflected ERA's belief that until the customers are afforded a reasonable opportunity to comment on a proposed final rate structure, it would not be appropriate to decide or prejudge any relevant issues. The effective date of the interim rates was May 25, 1978, and the rates expire on May 24, 1979. The rates, however, do not meet the payout requirements of law.

DISCUSSION

The development of full payout rates, which were to supersede the interim rates on or before the expiration date of the interim rates, for power marketed by the Western Area Power Administration from the Central Valley Project has been diligently pursued but has been prolonged because of the many controversial issues involved. As a result of extensive comments and the need to fully consider such comments, the full payout rates for the Central Valley Project cannot be developed, recommended for approval, and implemented prior to the present expiration date of the interim rates. Hence, an extension of the interim rates is required.

Rates which will cover the projected revenue requirements of the Central Valley Project in compliance with statutory requirements will be implemented on an interim basis and submitted to the FERC for confirmation and approval on a final basis as soon as practicable.

ORDER

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective May 25, 1979, an extension of Rate Schedules CV–F3R and CV–P2R for power marketed by the Western Area Power Administration from the Central Valley Project until November 1, 1979, or until other rates are confirmed, approved, and placed in effect on an interim basis, whichever occurs first. This Order amends the Order Establishing Interim Rates issued by the Economic Regulatory Administration on March 20, 1978, in ERA Docket No. WAPA 78–1.

Issued at Washington, DC, this 31st day of March, 1979.

George S. McIsaac,
Assistant Secretary, Resource Applications.

U.S. Department of Energy, Western Area Power Administration

Central Valley Project, California

Schedule of Interim Rates for Wholesale Firm Power Service

Effective: May 25, 1978.

Available: In the area served by the Western Area Power Administration in the Central Valley Project Area of California.

Applicable: To wholesale power customers, for light and power service supplied through one meter at one point of delivery. Not applicable to standby or auxiliary service or to the sale of dump energy.

Character and Conditions of Service: Alternating current, sixty hertz, three phase, normally delivered and metered at the low-voltage side of substation.

Monthly Rate: Demand charge.—$2.00 per kilowatt of billing demand.

Energy Charge.—4.20 mills per kilowatt-hour for the period from May 25, 1978 through October 31, 1979.

Minimum Bill: The effective monthly demand charge per kilowatt of contract rate of delivery.

Billing Demand: The highest 30-minute integrated demand measured during the month.

Adjustments

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered at the low-voltage side of customer's substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of not less than 95 percent lagging.

U.S. Department of Energy, Western Area Power Administration

Central Valley Project, California

Schedule of Interim Rates for Commercial Irrigation and/or Drainage Pumping Service and for Wholesale Firm Power Service When Supplied in Conjunction Therewith

Effective: May 25, 1978.

Available: In the area served by the Western Area Power Administration in the Central Valley Project Area of California.

Applicable: To commercial customers for their own use for, or for resale for, irrigation and/or drainage pumping and purposes incidental thereto supplied through one meter at one point of delivery. Wholesale firm power service for purposes other than irrigation and/or drainage pumping service when supplied in conjunction with pumping service through the same meter at the same point of delivery shall be supplied hereunder.

Not applicable to stand-by or auxiliary service or to the sale of dump energy.

Character and Conditions of Service: Alternating current, sixty hertz, three phase, delivered and metered at the low-voltage side of substation. Rates of delivery for pumping service and for wholesale firm power service shall be separately stated in the contract. A seasonal period of delivery for pumping service is permitted hereunder provided the seasonal service months are stated by contract.

Monthly Rate: Demand charge.—$2.00 per kilowatt of billing demand.

Energy charge.—4.20 mills per kilowatt-hour for the period from May 25, 1978, through October 31, 1979.

Minimum Bill: The monthly minimum charge shall be the effective monthly demand charge per kilowatt of the contract rate or rates of delivery in effect during such month, *except* that during the period specified as seasonal service months, there will be no monthly minimum charge but in lieu thereof a seasonal minimum charge shall apply which shall be equal to the product of the effective monthly demand charge times the number of seasonal service months times the sum of the kilowatts of contract rates of delivery for seasonal pumping service and firm power service, if any.

Billing Demand: The billing demand will be the highest 30-minute integrated demand measured during the month.

Adjustments

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered at the low-voltage side of customer's substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of not less than 95 percent lagging.

[FR Doc. 79-11808 Filed 4-16-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(FRL 1205-2)

Renewal of Temporary Tolerances for N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine

On August 4, 1976, the Environmental Protection Agency (EPA) announced (41 FR 32642) the establishment of temporary tolerances for combined residues of the herbicide *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultrual commodities peanuts, peanut forage, and peanut hay at 0.1 part per million (ppm). These tolerances were established in response to a pesticide petition (PP 6G1740) submitted by American Cyanamid Co., PO Box 400, Princeton, NJ 08540. These temporary tolerances expired July 28, 1977.

American Cyanamid Co. requested a one-year renewal of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 241-EUP-80 that has been renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances would protect the public health. Therefore, the temporary tolerances have been renewed on condition that the pesticide be used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire March 20, 1980. Residues not in excess of 0.1 ppm remaining in or on peanuts, peanut forage, and peanut hay after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755-7013).

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].)

Dated: April 11, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[PP 6G1740/T197]

[FR Doc. 79-11957 Filed 4-16-79; 8:45 am]

BILLING CODE 6560-01-M

Establishment of a Temporary Tolerance for 1-(2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole

Pennwalt Corp., Decco Div., 1713 South Carolina Ave., Monrovia, CA 91016, submitted a pesticide petition (PP 8G2082) to the Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for residues of the fungicide 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1*H*-imidazole in or on the raw agricultural commodity citrus fruits as a result of postharvest application at 10 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (4581-EUP-31) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Pennwalt Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires March 15, 1980. Residues not in excess of 10 ppm remaining in or on citrus fruits after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide

indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Henry Jacoby, Product Manager 21, Registration Division (TS–767), Office of Pesticide Programs, East Tower, 401 M St., SW., Washington, DC 20460 (202/755–2562).

(Section 408(j) of the Federal Food, Drug, and Cosmestic Act [21 U.S.C. 346a(j)].)

Dated: April 6, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[PP 8G2082/T 199; FRL 1205–7]

[FR Doc. 79–11952 Filed 4–16–79; 8:45 am]

BILLING CODE 6560–01–M

Issuance of an Experimental Use Permit for American Cyanamid Co.

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such a permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 241–EUP–93. American Cyanamid Co., Princeton, New Jersey 08540. This experimental use permit allows the use of 175 pounds of the insecticide 1,5-bis (4-trifluoromethyl) phenyl-1,4-pentadien-3-one, (1,4,5,6-tetrahydro-5,5-dimethyl-2-pyrimidinyl)hydrazone on noncropland (rights of way, cutover timberland, abandoned military bases, and similar areas) to evaluate control of imported fire ants. A total of 12,000 acres is involved; the program is authorized only in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas. The experimental use permit is effective from April 15, 1979 to April 15, 1980. This permit is being issued with the limitation that the active ingredient will be applied only on land not used for food production or grazing. (PM–15, Room: E–229, Telephone: 202/426–9425)

Interested persons wishing to review or comment on the experimental use permit are referred to Room E–229, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202/426–9425 before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 [92 Stat. 819; 7 U.S.C. 136]).

Dated: April 11, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[OPP–50420; FRL 1205–6]

[FR Doc. 79–11954 Filed 4–16–79 8:45 am]

BILLING CODE 6560–01–M

Issuance of Experimental Use Permits for Diamond Shamrock Corp., et al.

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 677–EUP–15. Diamond Shamrock Corp., Cleveland, Ohio 44114. This experimental use permit allows the use of 37,213 pounds of the fungicide chlorothalonil on carrots, celery, cucurbits, peanuts, potatoes, and tomatoes to evaluate disease control when applied through sprinkler irrigation equipment. A total of 5,800 acres is involved; the program is authorized only in the States of Alabama, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Texas, and Wisconsin. The experimental use permit is effective from February 5, 1979 to January 1, 1980. Permanent tolerances for residues of the active ingredient in or on carrots, celery, cucurbits, peanuts, potatoes, and tomatoes have been established (40 CFR 180.275). This permit is being issued with the limitation that there will be no overlapping applications of the pesticide. (PM–21, Room: E–305, Telephone: 202/755–2562)

No. 677–EUP–16. Diamond Shamrock Corp., Cleveland, Ohio 44114. This experimental use permit allows the use of 6,000 pounds of the fungicide chlorothalonil on carrots, celery, potatoes, and tomatoes to evaluate disease control when applied through sprinkler irrigation equipment. A total of 5,800 acres is involved; the program is authorized only in the State of California. The experimental use permit is effective from February 6, 1979 to January 1, 1980. Permanent tolerances for residues of the active ingredient in or on carrots, celery, potatoes, and tomatoes have been established (40 CFR 180.275). This permit is being issued with the limitation that there will be no overlapping applications of the pesticide. (PM–21, Room: E–305, Telephone: 202/755–2562)

No. 677–EUP–17. Diamond Shamrock Corp., Cleveland, Ohio 44114. This experimental use permit allows the use of 625.5 pounds of the fungicide chlorothalonil on rice to evaluate control of blast, brown spot, leaf smut, narrow brown leaf spot, sheath blight, sheath spot, and stem rot. A total of 240 acres is involved; the program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from February 6, 1979 to September 1, 1979. This permit is being issued with the limitation that all treated crops will be destroyed or used for seed purposes only. (PM–21, Room: E–305, Telephone: 202/755–2562)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: April 11, 1979.

Douglas D. Campt,

Acting Director, Registration Division.

[OPP–50416; FRL 1205–5]

[FR Doc. 79–11955 Filed 4–16–79; 8:45 am]

BILLING CODE 6560–01–M

ENVIRONMENTAL PROTECTION AGENCY

California State Motor Vehicle Pollution Control Standards; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing on California emission control system warranty regulations.

SUMMARY: The Calofornia Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that the Board adopted regulations on emission control systems warranties for motor vehicles and motor vehicle engines sold in California. EPA will hold a public hearing on the sixteenth and seventeenth of May 1979, to consider the applicability of section 209 of the Clean Air Act, as amended, to California's warranty regulations.

ADDRESS: Copies of all materials relevant to the hearing are available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at: U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Maureen D. Smith, Attorney-Advisor, Mobile Source Enforcement Division

(EN–340), U.S. Environmental Portection Agency, Washington, D.C. 20460 (202) 426–9436.

SUPPLEMENTARY INFORMATION: Section 209(a) of the Clean Air Act, as amended, 42 U.S.C. 7543(a) ("Act"), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles of new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition percedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209 to any State which had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles, or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. The Administrator must grant a waiver unless he finds that: (1) The determination of the State is arbitrary and capricious, (2) the State does not need the State standards to meet compelling and extraordinary conditions, or (3) the State standards and accompanying enforcement procedures are not consistent with Section 202(a) of the Act.

In a March 12, 1979, letter to the Administrator, CARB notified EPA that it adopted regulations on December 14, 1978, on emission control system warranties for motor vehicles and motor vehicle engines sold in California.[1] The regulations were adopted to clarify and define the rights and responsibilities of vehicle and engine manufacturers and consumers under California's warranty statute.[2] This statute requires the manufacturer to warrant to each purchaser that the motor vehicle or engine conforms with applicable emission standards at the time of sale and is free from defects in materials and workmanship which would cause the vehicle or engine to fail to conform to such standards for its useful life.

[1] Section 2035–2042, Title 13, California Administrative Code (December 14, 1979). The regulations apply to all California certified 1973 and later model year motorcycles, light-duty, medium-duty and heavy-duty vehicles and motor vehicles engines.

[2] Section 43204, California Health and Safety Code (1978).

CARB asserts that the regulations fall within the scope of previously granted waivers and need not meet independently the requirements of section 209(b) of the Act. CARB deems the warranty regulations to be "conditions precedent to the initial retail sale" of new vehicles, rather than standards or accompying enforcement procedures. According to CARB, EPA must waive Federal preemption of such conditions once the underlying standards and accompying enforcement procedures have been waived. In addition, EPA has previously determined that the warranty statute adopted by CARB in 1971 did not establish new standards or enforcement procedures and that previous waivers extended to the warranty legislation.[3] Thus, CARB has asked EPA for written concurrence that the December 14 warranty regulations fall within the scope of previous waivers.

Although EPA ultimately may determine that the regulations fall within the scope of previous waivers and need not meet independently the section 209(b)(1) waiver criteria, interested persons should be given an opportunity to address issues not arising in previous wavier hearings and determinations. Of particular concern is whether implementation of the warranty regulations requires waiver of Federal preemption, and if so, whether EPA should grant a waiver.

Accordingly, a public hearing will be convened at the U.S. Environmental Protection Agency Regional Office (Region IX), Nevada Room, Sixth Floor, 215 Fremont Street, San Francisco, California, on the sixteenth and seventeenth of May 1979 (9 a.m.–5 p.m.). Benjamin R. Jackson, Deputy Assistant Administrator for Mobile Source and Noise Enforcement, EPA, is designated as Presiding Officer for this hearing.

Any person desiring to make a statement at the hearing or to submit material for the hearing record should file a notice of such intention along with 10 copies of the proposed statement and other relevant material by May 10, 1979, with Ms. Lillian Hibbs, EPA Public Information Reference Unit, at the ADDRESS listed above. In addition, if feasible, 25 copies of such statement or material for the hearing record should be submitted to the Presiding Officer at the time of the public hearing.

Procedures. Since the public hearing is designed to give interested persons an opportunity to participate in this proceeding by the presentation of data, views, arguments, or other pertinent information, there are no adversary parties as such. Statements by the participants will not be subject to cross-examination. The Presiding Officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

[3] 37 Fed. Reg. 14831 (July 25, 1972).

Presentations by the participants should be limited to the following considerations:

(1) Whether California's warranty regulations adopted on December 14, 1978, are subject to waiver under section 209(b) of the Act;

(2) Whether the regulations require a separate waiver determination;

(3) Whether the regulations should be treated as standards or as accompanying enforcement procedures under section 209(b) of the Act;

(4) Whether, if treated as standards or accompanying enforcement procedures, the regulations independently meet the waiver criteria of section 209(b) of the Act.

In order to assure full opportunity for the presentation of data, views and arguments by participants, the Presiding Officer will, upon request of the participants, allow a reasonable time after the close of the hearing for the submission of written data, views, arguments or other pertinent information to be included as part of the hearing record.

A verbatim record of the proceeding will be made and will be made available for public inspection at the EPA Public Information Reference Unit. A copy of the transcript may be requested from the reporter during the hearing and will be made at the expense of the person so requesting.

The determination of the Administrator on the action to be taken on CARB's warranty regulations is not required to be made solely on the record of the public hearing. Other scientific, engineering and pertinent information not presented at the hearing also may be considered. This information will be available for public inspection.

Dated: April 13, 1979.

B. R. Jackson,

Acting Assistant Administrator for Enforcement.

[FRL 1206–3]

FR Doc. 79–12079 Filed 4–16–79; 11:41 a.m.]

BILLING CODE 6560–01–M

Suspension of Registrations for Certain Uses of 2, 4, 5–T and Silvex; Commencement of Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Commencement of Hearings.

SUMMARY: On February 28, 1979, the Administrator of the Enivronmental Protection Agency signed orders and decisions suspending the registration for certain uses of 2, 4, 5–T and Silvex. These orders and decisions were published in the **Federal Register** on March 15, 1979 (44 Federal Register 15874ff). Hearings for the introduction of evidence will commence Thursday, April 19, 1979, at 9:00 a.m., in Room 1118B, Crystall Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

For the Hearing Panel.

Charles N. Gregg,
Chairperson.

April 13, 1979.

[FRL 1206–4]

[FR Doc. 79–12089 Filed 4–16–79; 11:41 am]
BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

Inquiry Relative to the Preparation for a General World Administrative Radio Conference of the International Telecommunication Union to Consider Revision of the International Radio Regulations; Proceeding Terminated

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: A Petition for Reconsideration has been filed in Docket No. 20271 seeking the Commission's reconsideration concerning WARC allocations proposals in the 220–225 MHz band. In view of the fact that the Commission had previously considered all of the facts presented in the Petition, and no new material facts were presented, the Petition has been denied.

DATES: Non-Applicable.

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

FOR FURTHER INFORMATION CONTACT: Edward R. Jacobs, Office of Chief Engineer, (202) 632–7067.

Adopted: March 30, 1979.

Released: April 10, 1979.

By the Commission: Commissioner Lee absent.

In the matter of an inquiry relative to preparation for a General World Administrative Radio Conference of the International Telecommunication Union to consider revision of the international Radio regulations

1. On December 28, 1978, the Commission released a *Report and Order* in Docket No. 20271, 70 FCC 2d, FCC 78–849, which presented comprehensive recommendations to the Department of State regarding U.S. proposals to the 1979 World Administrative Radio Conference (WARC). These recommendations have been sent to the Department of State and have been included in the United States proposals which have been transmitted to the ITU Secretary General for the WARC. These actions did not result in any change to the allocations table in the Commission's Rules and Regulations. Such action may be necessary after the WARC and would be accomplished in accordance with required rule making procedures.

2. On January 29, 1979, we received a *Petition for Reconsideration* from Larry W. Mohler, President of the 220 MHz Spectrum Management Association (SMA) of Southern California, requesting "* * * the Commission to reconsider and set aside Paragraphs 103 and 124 * * * for rehearing." *Id.* at 1. SMA argues that "* * * individuals and representatives of Amateur Radio Service have not been given a chance to comment on the proposed sharing with the Maritime Mobile Radio Service, and change of Amateur Radio Service from a shared primary to a shared secondary, as the proposals were not contained in the Eighth (8th) Notice of Inquiry (NOI)." *Id.* at 2. SMA believes that if the proposal is adopted internationally and implemented domestically, interests of the Amateur Radio Service would be affected. Further, petitioner feels that "* * * proposed sharing of Maritime Radio and Amateur Radio Services appears to be incompatible * * *" *Id.* at 3.

3. On February 9, 1979, we received seven individual requests from Amateur Radio users in southern California to "* * * retract that portion of the USA submittals addressing this subject (Par. 103 and Par. 124) * * *" These requests, from B. J. Russell, Hermosa Beach, CA., C. K. Faludi, Lawndale, CA., W. A. Monahan, Manhattan Beach, CA., L. A. Carter, Los Angeles, CA., N. L. Kincaid, Hawthorne, CA., J. A. Eckert, Los Angeles, CA., and K. Johnson, Hawthorne, CA., desire a revised allocation with Maritime, exclusive, World-wide from 216–220 MHz, and Amateur Service, exclusive, World-wide from 220–225 MHz. To support this request, they state three points: (1) "220–225 MHz is not a "wasteland of spectrum" to be treated as fair game for would-be spectrum grabbers. Its use in the Amateur Service is rapidly increasing;" (2) "Amateur use of 220–225 MHz cannot be shared with any "Maritime" service"; and (3) "Conservation of spectrum is not in evidence in the "Maritime" proposal; but if conservation were to be practiced, ample spectrum exists in 4 Megahertz of allocation."

4. While we recognize the concerns expressed by all of these parties, our proposal for a primary Maritime Mobile and a secondary Amateur allocation at 220–225 MHz was made after a lengthy proceeding taking into account the needs of all services. We have conducted this proceeding over the past four years with nine Notices of Inquiry and have considered over one thousand comments submitted by the Amateur community. All requirements were fully investigated and analyzed against present and future requirements. The result was an attempt to balance the competing interests of the many users of the radio spectrum in the public interest. Indeed, factors which were considered included "* * * the ability of an allocation to satisfy the maritime requirement, acceptance of the allocation worldwide, and the impact of the allocation upon existing services occupying the band." *Report and Order*, SUPRA. at 52. We went on to indicate that the "* * * proposal must make a clear, positive showing to the Conference that the U.S. views this as an important, valid requirement which must be satisfied somewhere in the VHF/UHF portion of the spectrum." *Ibid.* The Commission further noted that "* * * [w]hile the current investment in this 220–225 MHz band by the Amateur service is significant, we believe the requirements of the maritime mobile service necessitate such action." *Ibid.* Finally, we must indicate that in the 220–225 MHz band, the only non-government service permitted is the amateur service which shall not cause harmful interference to the government radiolocation service.

5. Neither SMA nor the seven requests present new material or factors to our attention. Domestic implementation, if the proposal is adopted at the WARC, would provide interested parties with opportunity to comment in any ensuing Rule Making procedures. Furthermore, our recommendations have already been sent to the Department of State and have been included in the United States proposals which have been transmitted to the ITU Secretary General for the Conference. We feel that any further examination would only revisit material which has been examined many times before.

6. Accordingly, the SMA *Petition for Reconsideration* and requests for retraction are denied pursuant to Section 4(i) of the Communications Act of 1934, as amended. It is ordered that this proceeding is hereby *terminated.*

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-11844 Filed 4-16-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

FM Broadcast Applications Ready and Available for Processing

Adopted: April 9, 1979.

Released: April 11, 1979.

By the Chief, Broadcast Facilities Division.

Cutoff Date: May 30, 1979.

Notice is hereby given, pursuant to § 1.573(d) of the Commission's Rules, that on May 31, 1979, the FM broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 30, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. by the close of business on May 30, 1979.

Any party in interest desiring to file pleadings concerning this application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPH-11179 (new), Sandpoint, Idaho, Blue Sky Broadcasting, Inc. Req: 95.3 mHz; Channel No. 237A. ERP: 1 kW; HAAT: −427 ft.

BPH-780822AC (WORJ-FM), Mount Dora, Florida, CKK Broadcasting Company, Inc. Has: 107.7 mHz; Channel No. 299C. ERP: 100 kW; HAAT: 350 ft. (lic). Req: 107.7 mHz; Channel No. 299C. ERP: 100 kW; HAAT: 778 ft.

BPH-780831AK (new), Fruitland, Maryland, Crawford Communications of Maryland. Req: 105.5 mHz; Channel No. 288A. ERP: 1.75 kW; HAAT: 400 ft. (allocated to Salisbury, Md.)

BPH-781018AD (new), Alturas, California, KCNO, Inc. Req: 94.5 mHz; Channel No. 233C. ERP: 51.6 kW; HAAT: −99 ft.

BPH-781020AE (new), Fort Valley, Georgia, Valcom, Inc. Req: 106.3 mHz; Channel No. 292A. ERP: 3 kW; HAAT: 297 ft.

BPH-781026AB (new), Beaverton, Michigan, Leona Katherine Lacey. Req: 97.7 mHz; Channel No. 249A. ERP: 3 kW; HAAT: 259 ft.

BPH-781107AI (WLQY), Fort Pierce, Florida, Gulfstream Broadcasting Co., Inc. Has: 98.7 mHz; Channel No. 254C. ERP: 100 kW; HAAT: 340 ft. (lic). Req: 98.7 mHz; Channel No. 254C. ERP: 100 kW; HAAT: 1373 ft.

BPH-781114AF (new), Green Valley, Arizona, Grace Broadcasting Systems, Inc. Req: 92.1 mHz; Channel No. 221A. ERP: 3 kW; HAAT: 172 ft.

BPH-781211AI (new), Crozet, Virginia, McClenahan Broadcasting Corporation. Req: 102.3 mHz; Channel No. 272A. ERP: 3 kW; HAAT: 300 ft.

BPH-781214AC (new), Homer, Alaska, Peninsula Communications, Inc. Req: 103.5 mHz; Channel No. 278C. ERP: 25 kW; HAAT: 1020 ft.

BPH-790104AF (new), Abilene, Texas, Abilene Broadcasting Company, Inc. Req: 99.3 mHz; Channel No. 257A. ERP: 3 kW; HAAT: 196 ft.

BPH-790105AE (new), Frederick, Oklahoma, Tilco Broadcasting, Inc. Req: 95.9 mHz; Channel No. 240A. ERP: 3 kW; HAAT: 262 ft.

BPH-790108AD (new), Louisa, Virginia, Mid-Virginia Broadcasting Corp. Req: 105.5 mHz; Channel No. 288A. ERP: 3 kW; HAAT: 300 ft.

BPH-790109AJ (new), Osage, Iowa, Osage Broadcasting Company. Req: 92.7 mHz; Channel No. 224A. ERP: 3 kW; HAAT: 150 ft.

BPH-790110AC (new), Tallahassee, Florida, Metropolitan Broadcasting Corp., Inc. Req: 95.9 mHz; Channel No. 240A. ERP: 3 kW; HAAT: 300 ft.

BPH-790112AD (new), Belhaven, North Carolina, Roach-Pennington Communications. Req: 92.1 mHz; Channel No. 221 A. ERP: 3 kW; HAAT: 282 ft.

BPH-790117AI (new) Fergus Falls, Minnesota, Lake Region Media, Inc. Req: 96.5 mHz; Channel No. 243 C. ERP: 100 kW; HAAT: 493 ft.

BPH-790117AJ (new), Princeton, Illinois, G. W. Gamel. Req: 98.3 mHz; Channel No. 252 A. ERP: 3 kW; HAAT: 300 ft.

BPH-790118AC (new), New Roads, Louisiana, Progressive Broadcasting Corporation. Req: 106.3 mHz; Channel No. 292 A. ERP: 3 kW; HAAT: 279 ft.

BPH-790124AG (WKKI), Celina, Ohio, Mid-America Radio. Has: 94.3 mHz; Channel No. 232 A. ERP: .74 kW; HAAT: 115 ft. (lic.) Req: 94.3 mHz; Channel No. 232 A. ERP: 3 kW; HAAT: 300 ft.

BPH-790126AF (KHLY), Auburn, California, Auburn Broadcasting Corportion. Has: 101.1 mHz; Channel No. 266 B. ERP: 3.2 kW; HAAT: 450 ft. (lic.) Req: 101.1 mHz; Channel No. 266 B. ERP: 50 kW; HAAT: 465 ft.

BPH-790129AD (WDLB-FM), Marshfield, Wisconsin, Goetz Broadcasting Corporation. Has: 106.5 mHz; Channel No. 293 C. ERP: 56 kW; HAAT: 400 ft. (lic.) Req: 106.5 mHz; Channel No. 293 C. ERP: 100 kW; HAAT: 796 ft.

BPH-790129AE (new), Las Vegas, Nevada, Hispanic Broadasting Company, Inc. Req: 96.3 mHz; Channel No. 242 C. ERP: 31.5 kW; HAAT: 1529 ft.

BPH-790130AC (KSRF), Santa Monica, California, Santa Monica Broadcasting, Inc. Has: 103.1 mHz; Channel No. 276 A. ERP: 1.85 kW; HAAT: −95 ft. (lic.) Req: 103.1 mHz; Channel No. 276 A. ERP: .562 kW; HAAT: 575.5 ft.

BPH-790130AD (new), Chariton, Iowa, Home Town Development Company. Req: 105.5 mHz; Channel No. 288 A. ERP: 1.70 kW; HAAT: 389 ft.

BPH-790201AH (WJAD), Bainbridge, Georgia, Decatur Broadcasting Company, Inc. Has: 97.3 mHz; Channel No. 247 C. ERP: 28.5 kW; HAAT: 145 ft. (lic.) Req: 97.3 mHz; Channel No. 247 C. ERP: 100 kW; HAAT: 527 ft.

BPH-790208AA (new), Mountain Home, Idaho, KFLI Radio, Inc. Req: 99.3 mHz; Channel No. 257 A. ERP: 3 kW; HAAT: −67 ft.

BPH-790208AB (new), Mountain Pass, California, KIXV, Inc. Req: 99.5 mHz; Channel No. 258 B. ERP: 2.29 kW; HAAT: 1707 ft.

BPH-790208AC (new), Yermo, California, KIXV, Inc. Req: 98.1 mHz; Channel No. 251 B. ERP: 1.05 kW; HAAT: 2333 ft.

BPED-2406 (WWPV-FM), Colchester, Vermont, Saint Michaels College. Has: 88.7 mHz; Channel No. 204 D. TPO: .01 kW. (lic.) Req: 88.7 mHz; Channel No. 204 C. ERP: 10 kW; HAAT: 82 ft.

BPED-2587 (WGMC), Greece, New York, Greece Central School District. Has: 90.1 mHz; Channel No. 211 D. TPO: .01 kW. (lic.) Req: 90.1 mHz; Channel No. 211 A. ERP: 2.05 kW; HAAT: 46 ft.

BPED-2598 (new), Sonora, California, Sonora Union High Sch Bd of Trustees. Req: 91.5 mHz; Channel No. 218 D. ERP: .035 kW; HAAT: −16.5 ft.

BPED-2711 (new), Greenville, South Carolina, Furman University. Req: 91.5 mHz; Channel No. 218 D. ERP: .003 kW; HAAT: 64 ft.

BPED-2719 (new), Lorton, Virginia, Ethnic Public B/cting Foundation. Req: 88.1 mHz; Channel No. 201 D. TPO: .01 kW.

BPED-780927AB (new), Dallas, North Carolina, Gaston College Bd. of Trustees. Req: 91.7 mHz; Channel No. 219 A. ERP: 3 kW; HAAT: 140 ft.

BPED-780928AB (new), Knoxville, Tennessee, University of Tennessee. Req: 90.3 mHz; Channel No. 212 A. ERP: .128 kW; HAAT: 62 ft.

BPED-781016AM (new), Kingston, New York, Sound of Life, Inc. Req: 89.7 mHz; Channel No. 209 B. ERP: 21 kW; HAAT: 698 ft.

BPED-781106AZ (new), Guayama, Puerto Rico, Min. Radial Cristo Viene Pronto, Inc. Req: 88.1 mHz; Channel No. 201 B. ERP: 31.6 kW; HAAT: 1829 ft.

BPED-781116AH (new), Fresno, California, Radio Bilingue, Inc. Req: 91.5 mHz; Channel No. 218 B. ERP: 15.8 kW; HAAT: 872 ft.

BPED-781117AH (WCCX), Waukesha, Wisconsin, Carroll College. Req: 104.5 mHz;

Channel No. 283D. TPO: .01 kW; HAAT: 44 ft.

BPED–781205AB (WRFG), Atlanta, Georgia, Radio Free Georgia B/cting Found., Inc. Has: 89.3 mHz; Channel No. 207A. ERP: 1.25 kW; HAAT: 295 ft. (lic.) Req: 89.3 mHz; Channel No. 207C. ERP: 24.3 kW; HAAT: 297 ft.

BPED–781226AH (new), Trenton, New Jersey, Mercer County Community College. Req: 89.1 mHz; Channel No. 206A. ERP: 3 kW HAAT: 178 ft.

BPED–790102AF (new), Goodman, Mississippi, Homes Junior College. Req: 89.5 mHz; Channel No. 208C. ERP: 20 kW; HAAT: 346.6 ft.

BPED–790108AO (new), Walnut Creek, California, Del Valle High School. Req: 100.5 mHz; Channel No. 263D. TPO: .010 kW; HAAT: 100 ft.

BPED–790115AE (WSPN), Saratoga Springs, New York, Skidmore College. Has: 91.1 mHz; Channel No. 216D. TPO: .01 kW. (lic.) Req: 91.1 mHz; Channel No. 216A. ERP: .253 kW; HAAT: 98 ft.

BPED–790118AG (KINF), Dodge City, Kansas, Dodge City Community College. Has: 91.9 mHz; Channel No. 220D. TPO: .01 kW. (lic.) Req: 91.9 mHz; Channel No. 220A. ERP: 2.61 kW; HAAT: 123.4 ft.

BPED–790123AG (new), Haines, Alaska, Lynn Canal Broadcasting. Req: 102.3 mHz; Channel No. 272A. ERP: 3 kW; HAAT: 1224 ft.

BPED–790207 AC (KSTK), Wrangell, Alaska, Wrangell Radio Group. Has: 101.7 mHz; Channel No. 269A. ERP: .01 kW; HAAT: ft. (lic.) Req: 101.7 mHz; Channel No. 269A. ERP: 3 kW; HAAT: 294 ft.

[FR Doc. 79–11804 Filed 4–16–79; 8:45 am]

BILLING CODE 6712–01–M

Television Translator Applications Ready and Available for Processing

Adopted: April 6, 1979.

Released: April 10, 1979.

By the Chief, Broadcast Facilities Division:

Notice is hereby given pursuant to § 1.572(c) of the Commission's Rules, that on May 25, 1979, the television translator applications listed in the attached Appendix will be considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.591(b) of the Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 24, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on May 24, 1979.

Any party in interest desiring to file pleadings concerning any pending television translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to Section 1.580(i) of the Rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT–781016IH (new), Charlottesville, Virginia, Shenandoah Valley Television Systems, Inc. Req: Channel 64, 770–776 MHz, 1000 watts. Primary: WHSV–TV, Harrisonburg, Virginia.

BPTT–781204IG (new), Mt. Pleasant, Utah, Sanpete County. Req: Channel 56, 722–728 MHz, 100 watts. Primary: KUED–TV, Salt Lake City, Utah.

BPTT–781204IH (new), Rural Garfield County, Utah, Garfield County. Req: Channel 67, 788–794 MHz, 100 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–781204II (new), Rural Garfield County & Kane Counties, Utah, Lake Powell Antennavision, Inc. Req: Channel 47, 668–674 MHz, 100 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–781206ID (new), Cody, Powell & Rural Area, Wyoming, Park County. Req: Channel 53, 704–710 MHz, 100 watts. Primary: KURL–TV, Billings, Montana.

BPTT–781206IE (new), Cody, Powell & Rural Area, Wyoming, Park County. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KTVQ–TV, Billings, Montana.

BPTT–781211IF (new), Red Lake, Minnesota, Red Lake Band of Chippewa Indians. Req: Channel 65, 776–782 MHz, 100 watts. Primary: KXJB–TV, Fargo, North Dakota.

BPTT–781211IH (new), Richfiled, Monroe & Elsinore Area, Utah, Sevier County. Req: Channel 40, 626–632 MHz, 100 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–781211II (new), Salina & Redmond, Utah, Sevier County. Req: Channel 64, 770–776 MHz, 10 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–781211IJ (new), Salina & Redmond, Utah, Sevier County. Req: Channel 66, 782–788 MHz, 10 watts. Primary: KUED–TV, Salt Lake City, Utah.

BPTT–781215IE (new), Marshall, Minnesota, Hubbard Broadcasting, Inc.. Req: Channel 30, 566–572 MHz, 1000 watts. Primary: KSTP–TV, St. Paul, Minnesota.

BPTT–781228IB (new), Rural Juab County & Aurora, Utah, Springfield Television of Utah, Inc. Req: Channel 56, 722–728 MHz, 100 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–781228IC (new), Oakland, Maryland, Maryland Public Broadcasting Commission. Req: Channel 36, 602–608 MHz, 1000 watts. Primary: WWPB–TV, Hagerstown, Maryland.

BPTT–790213IA (K74AR), Deer River, Minnesota, RJR Communications, Inc.. Req: Change frequency to Channel 61, 752–758 MHz., increase output power to 100 watts.

BPTT–790213IB (new), Deer River, Minnesota, Duluth-Superior Area Educational. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WDSE–TV, Duluth, Minnesota.

BPTT–790215IA (K70BG), Deer River, Minnesota, KDAL, Inc.. Req: Change frequency to Channel 59, 740–746 MHz., increase output power to 100 watts.

BPTT–790326IA (new), Seaford, Delaware, Delaware Citizens' Committee, Inc. Req: Channel 64, 770–776 MHz, 1000 watts. Primary: YHYY–TV, Wilmington, Delaware.

VHF TV Translator Applications

BPTTV–781016IG (K06HQ), Gila Center Federal Housing Area & Hot Springs, New Mexico. Gila Center Recreation Association. Req: Change freqency to Channel 5, 76–82 MHz.

BPTTV–781019IA (new), Dillingham, Alaska, City of Dillingham. Req: Channel 10, 192–198 MHz, 10 watts. Primary: KENI, KTVA & KAKM, Anchorage, Alaska.

BPTTV–781026IK (K07JY), Merriman, Nebraska, Village of Merriman. Req: Change freqency to Channel 2, 54–60 MHz.

BPTTV–781120IA (new), Mopang Lake & Lower Sabao Lake, Maine, Princeton-Calais Translators, Inc. Req: Channel 10, 192–198 MHz, 1 watt. Primary: WLBZ–TV, Bangor, Maine.

BPTTV–781206IB (new), Clark & Rural Area, Wyoming, Park County. Req: Channel 9, 186–192 MHz, 10 watts. Primary: KURL–TV, Billings, Montana.

BPTTV–781206IC (new), Clark & Rural Area, Wyoming, Park County. Req: Channel 13, 210–216 MHz, 10 watts. Primary: KTVQ–TV, Billings, Montana.

BPTTV–781211IG (new), Koosharem, Utah, Sevier County. Req: Channel 3, 60–66 MHz, 1 watt. Primary: KSTU–TV, Salt Lake City, Utah.

BPTTV–781212IF (new), Munds Park, Arizona, Pinewood Property Owners Association. Req: Channel 4, 66–72 MHz, 1 watt. Primary: KTVK–TV, Phoenix, Arizona.

BPTTV–781212IG (new), Munds Park, Arizona, Pinewood Property Owners Association. Req: Channel 5, 76–82 MHz, 1 watt. Primary: KPHO–TV, Phoenix, Arizona.

BPTTV–781212IH (new), Munds Park, Arizona, Pinewood Property Owners Association. Req: Channel 12, 204–210 MHz, 1 watt. Primary: KOOL–TV, Phoenix, Arizona.

BPTTV–781214IO (K07EC), Royal City & Beverly, Washington, Sentinel Bluff Television, Inc. Req: Change principal community to Vantage & Beverly, Washington, increase output power to 10 watts, change primary TV station to KEPR–TV, Channel 19, Pasco, Washington.

BPTTV–781214IP (K12EN), Royal City & Beverly, Washington, Sentinel Bluff Television, Inc. Req: Change principal community to Vantage & Beverly, Washington, increase output power to 10 watts, change primary TV station to KNDU, Channel 25, Richland, Washington.

BPTTV–781228ID (new), Rexburg, St. Anthony & Sugar City, Idaho, The Post Company. Req: Channel 12, 204–210 MHz, 10 watts. Primary: KIFI–TV, Idaho Falls, Idaho.

BPTTV–781026IL (K09NY), White Bear, Alaska, Bethel Broadcasting, Inc. Req: Change frequency to Channel 7, 174–180 MHz.

BPTTV–781211IK (K09FE), Meeker, Wilson Oil Camp, Rural Area West of Meeker & Rural Area South of Meeker, Colorado, Rio Blanco County TV Association. Req: Delete Wilson Oil Camp, Colorado from present principal community.

BPTTV–781211IL (K11FI), Meeker, Wilson Oil Camp, Rural Area West of Meeker & Rural Area South of Meeker, Colorado, Rio Blanco County TV Association. Req: Change frequency to Channel 12, 204–210 MHz, delete Wilson Oil Camp, Colorado from present principal community.

[FR Doc. 79–11805 Filed 4–16–79; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, May 3, 1979, Thursday, May 10, 1979, Thursday, May 17, 1979, Thursday, May 24, 1979, Thursday, May 31, 1979.

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining right for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, consititute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202–632–9710).

Albert F. Wiecjorek,

Committee Secretary, Federal Prevailing Rate Advisory Committee.

April 10, 1979.

[FR Doc. 79–11858 Filed 4–16–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Advisory Committees Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 State. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Pulmonary-Allergy Drugs Advisory Committee	May 3 and 4, 9:30 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing May 3, 9:30 a.m. to 10:30 a.m.; open committee discussion May 3, 10:30 a.m. to 4 p.m., May 4, 9 a.m. to 11 a.m.; closed committee deliberations May 4, 11 a.m. to 4 p.m.; Charles E. Eirkson III (HFD–160), 5600 Fishers Lane, Rockville, MD 20857, 301–443–3500.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss Tacaryl (NDA 11–950) and Temaril (NDA 11–316)—safety and efficacy review, Committee action report, Beta$_2$ Agonists—Preclinical data, and Vanceril (NDA 17–573)—phase 4 studies.

Closed committee deliberations. The Committee will discuss Notices of Claimed Investigational Exemption for New Drugs (IND) which have not been publicly disclosed. In accord with 21 CFR 312.5(a), the existence of IND's is considered trade secret information. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, place	Type of meeting and contact person
2. Ophthalmic Devices Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel.	May 14 and 15, 9 a.m.; Rm. 529A, 200 Independence Ave. SW., Washington, DC.	Closed committee deliberations May 14, 9 a.m. to 12 noon; open public hearing May 14, 1 p.m. to 2 p.m.; open committee discussion May 14, 2 p.m. to 5 p.m.; May 15, 9 a.m. to 5 p.m.; Max W. Talbott (HFK–460) 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to ophthalmic device clinical investigations, investigational guidelines, and contact lens care products to Max W. Talbott. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Max W. Talbott by May 1, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss the status of current ophthalmic device clinical investigations, proposals for modification of certain investigational guidelines, proposals for coding of contact lens care solutions, and other issues pertaining to contact lens care solutions.

Closed committee deliberations. The Committee will discuss information from three ongoing clinical investigations of intraocular lenses, information from one new drug application, and contact lens care solutions. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, place	Type of meeting and contact person
3. Immunology Devices Section of the Immunology and Microbiology Device Panel.	May 17 and 18, 9 a.m., Rm. 425 8757 Georgia Ave., Silver Spring, MD..	Open public hearing May 17, 9 a.m. to 10 a.m.; closed committee deliberations May 17, 10 a.m. to 5 p.m., May 18, 9 a.m. to 5 p.m.; William C. Dierksheide (HFK-440), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7234.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agena—Open public hearing. Interested persons are encouraged to present information pertinent to the use of alpha fetoprotein test for detection of neural tube defects to Srikrishna Vadlamudi (HFK-440). Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Srikrishna Vadlamudi By May 3, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Closed committee deliberations. The Panel will review and discuss premarket approval applications P780001 P780005, and P780006. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving

investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: April 12, 1979.

Donald Kennedy,

Commissioner of Food and Drugs.

[FR Doc. 79-11883 Filed 4-16-79; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committees Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Slow-Acting Anti-Rheumatic Drugs Subcommittee of the Arthritis Advisory Committee.	May 9, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open committee discussion 9 a.m. to 12 m.; open pubilc hearing 12 m. to 1 p.m.; open committee discussion 1 p.m. to 5 p.m.; Timothy A. Ulatowski (HFD-150), 5600 Fishers Lane, Rockville, MD 20857, 301-443-5197.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of arthritis.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss proposed guidelines for the clinical evaluation of slow-acting drugs for rheumatoid arthritis.

Committee name	Date, time, place	Type of meeting and contact person
2. Arthritis Advisory Committee	May 10 and 11, 9 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open committee discussion May 10, 9 a.m. to 1:30 p.m.; open public hearing May 10, 1:30 p.m. to 2:30 p.m.; open committee discussion May 10, 2:30 p.m. to 5 p.m.; May 11, 9 a.m. to 5 p.m.; Timothy A. Ulatowski (HFD-150), 5600 Fishers Lane, Rockville, MD 20857, 301-443-5197.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of arthritis.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss Chlorambucil (NDA 10-669) safety in unapproved uses; Methotrexate (NDA's 8-085 and 11-719) safety and efficacy for use in rheumatoid arthritis; Rengasil, Orgotein, and DMSO, safety and efficacy evaluation.

Committee name	Date, time, place	Type of meeting and contact person
3. Obstetrics-Gynecology Devices Section of the Obstetrics-Gynecology and Radiologic Devices Panel.	May 14, 9 a.m., Rm. 6821, 200 C St. SW., Washington, DC.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Lillian Yin (HFK-470), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to prophylactics with spermicidal lubricant and published proposed classification regulations of obstetric-gynecology devices to Lillian Yin. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Lillian Yin by May 1, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will review the petition for reclassification of spermicidal lubricated latex prophylactics.

Committee name	Date, time, place	Type of meeting and contact person
4. Peripheral and Central Nervous System Drugs Advisory Committee.	May 23, 9 a.m., Conference Rm. G-H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD..	Open public hearing/open committee discussion 9 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of neurological disease.

Agenda—Open public hearing. This proceeding is an open public hearing before an advisory committee which was announced in the **Federal Register** of April 13, 1979.

Open committee discussion: The Committee will discuss the safety and effectiveness of papaverine, ethaverine, and similar or related drugs.

Committee name	Date, time, place	Type of meeting and contact person
5. Neurological Devices Section of the Respiratory and Nervous System Devices Panel.	May 29, 9 a.m., Rm. 1409, 200 C St. SW., Washington, D.C..	Open public hearing May 29, 9 a.m. to 10 p.m.; open committee discussion May 29, 10 a.m. to 4 p.m.; Robert F. Munzner (HFK-430), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertaining to the classification and evaluation of neurological devices to Robert F. Munzner. Submission of data relative to classification findings is also invited. Those desiring to make formal presentations should notify Robert F. Munzner by May 18, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participations, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss: classification regulations which are to be reproposed; public comments regarding methyl methacrylate as a device; and public comments regarding the proposed classification of electroconvulsive therapy.

Committee name	Date, time, place	Type of meeting and contact person
6. Gastrointestinal Drugs Advisory Committee	May 31 and June 1, 9 a.m., Conference Rm. M Parklawn Bldg., 5600 Fishers Lane, Rockville, MD..	Open public hearing May 31, 9 a.m. to 10 a.m.; open committee discussion May 31, 10 a.m. to 5 p.m.; June 1, 9 a.m. to 4 p.m.; Joan Standaert (HFD-110), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss cimetidine (Tagamet) (NDA 17-920)—continuing clinical studies, update on safety studies (including post-marketing clinical experience), and long-term use as a prophylactic of ulcer disease; report of subcommittee on hepatotoxicity on draft guidelines for studying patients with preexisting liver disease, children, and drug interaction; and update on action recommendations made at the previous meeting of December 12 and 13, 1978.

Committee name	Date, time, place	Type of meeting and contact person
7. Anti-Infective Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	May 31 and June 1, 9 a.m., Conference Rm. G-H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing May 31, 9 a.m. to 10 a.m.; open committee discussion May 31, 10 a.m. to 5 p.m.; June 1, 9 a.m. to 3 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4280.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of infectious disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. On May 31, this Committee will meet jointly with the Fertility and Maternal Health Drugs Advisory Committee to discuss

sulfonamides for the treatment of vaginal infection. On June 1, the Committee will discuss safety and effectiveness of Sisamicin (NDA 50–502) and the draft guidelines for the clinical trial of systemic antimicrobials in surgical procedures.

Committee name	Date, time, place	Type of meeting and contact person
8. Fertility and Maternal Health Drugs Advisory Committee.....	May 31 and June 1, 9:30 a.m., Conference Rm. G-H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD..	Open public hearing May 31, 9 a.m. to 10 a.m.; open committee discussion May 31, 10 a.m. to 5 p.m.; June 1, 9 a.m. to 5 p.m.; A. T. Gregoire (HFD–130), 5600 Fishers Lane, Rockville, MD 20857, 301–443–3520.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. On May 31, this Committee will meet jointly with the Anti-Infective Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee to discuss sulfonamides for the treatment of vaginal infection. On June 1, the Committee will discuss Ritodrine (NDA 18–280) for the management of premature labor, Parlodel (NDA 17–962) for the treatment of infertility, and IND 13,628 estrogen pellets for contraception.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: April 12, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–11882 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–03–M

Food and Drug Administration

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a bulking agent in certain foods.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A3441) has been filed by Pfizer, Central Research, Pfizer, Inc., 235 E. 42d St., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a low calorie bulking agent.

The primary physical or technical functional effect of polydextrose is as a bulking agent covered under § 170.3(o)(28) (21 CFR 170.3(o)(28)). Secondary effects as a formulation aid, humectant, and texturizer are also claimed. The additive is proposed for use in an amount not in excess of that reasonably required to produce its intended effect in the following categories of food as defined in the referenced paragraphs of § 170.3(n) (21 CFR 170.3(n)):

(1) Baked goods and baking mixes (restricted to pies, cakes, cookies, and baked dietetic products);

(6) Chewing gum;

(9) Confections and frostings;

(12) Fats and oils (restricted to mayonnaise and salad dressings);

(20) Frozen dairy desserts and mixes;

(22) Gelatins, puddings, and fillings;

(25) Hard candy and cough drops; and

(38) Soft candy.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the need of an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: April 10, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[Docket No. 79F–0051]

[FR Doc. 79–11814 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–03–M

Office of Education

Emergency School Aid Act; Closing Date for Transmittal of Applications for the Special Projects Program for Fiscal Year 1979

Applications are invited under the Emergency School Aid Special Projects Program.

Authority for this program is contained in section 708(a)(2) of the Emergency School Aid Act ("ESAA"; Title VII of Pub. L. 92-318, as amended). (20 U.S.C. 1601-1619)

This program provides financial assistance to public agencies for special projects assistance. In particular, the Commissioner invites applications from—

(a) Local educational agencies that adopted desegregation plans or other plans described in Section 706(a) of the statute for initial implementation in the 1979-80 school year on or after November 6, 1978, and, therefore, too late to apply for ESAA assistance relating to those plans in the most recent funding cycle and

(b) Local educational agencies that adopted those plans in the recent past and that continue to have unmet educational needs arising from the implementation of the plans.

The commissioner has determined that projects to meet needs arising from the implementation of those plans will make substantial progress toward achieving the purposes of the statute.

Closing Date for Transmittal of Applications: Applications for awards must be mailed or hand delivered by June 11, 1979.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.532B, Washington, D.C. 20202.

The Commissioner of Education prefers a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service as proof of mailing.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

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 and D Streets, SW., 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.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Available Funds: $35,000,000 is available to support projects submitted in response to this notice.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Special Projects Branch, Equal Educational Opportunity Programs, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

Project Period: Grant awards made under this notice will be for projects beginning no earlier than July 1, 1979, and ending no later than June 30, 1980.

Resubmitted Applications: As required by section 710(d)(2) of the Emergency School Aid Act (20 U.S.C. 1609(d)(2)), applications from local educational agencies which are not approvable in whole or in part will be returned to applicants for modification and resubmission, within a reasonable period of time, at the applicants' option.

Applicable Regulations: The regulations applicable to this program are:

(a) Regulations relating generally to programs under the Emergency School Aid Act (45 CFR Part 185) and in particular 45 CFR 185.94 through 185.94-4, relating to Other Special Projects; and

(b) The Office of Education general provisions regulations (45 CFR Parts 100 and 100a and appendices), except to the extent that those regulations are inconsistent with 45 CFR Part 185.

Further Information: For further information contact David Lerch, Branch Chief, Special Projects Branch, Equal Educational Opportunity Programs, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202, Telephone: (202) 245-2465 or 245-0931.

(20 U.S.C. 1601-1619)

(CATALOG NUMBER: Catalog of Federal Domestic Assistance Number 13.532; Emergency School Aid-Special Projects)

Dated: April 9, 1979.

Ernest L. Boyer,

Commissioner of Education.

[FR Doc. 79-11834 Filed 4-16-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Education

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10 (a)(2)). This document is intended to notify the general public on their opportunity to attend.

DATES: May 5, 1979—Committee Mtgs.—9:00 a.m., General Council—1:30 p.m. May 6, 1979—Business Meeting—10:00 a.m. May 8, 1979—Public Hearings—1:00-4:30 p.m. May 9, 1979—Public Hearings—9:00 a.m.-12:00 noon.

ADDRESS: Committee Meetings and General Council meeting will be held at the Washington Plaza Hotel, Fifth Avenue and Westlake, Seattle, WA. Business Meetings will be held at the Olympic Hotel, Queen's Room, Fourth Avenue and Seneca Sts., Seattle, WA. Public Hearings will be held in the Seattle Center, Opera House, Seattle, WA. For further information contact: Dr. Rudy Cordova, Office of Bilingual Education, Reporters Building, Room 421, Office of Education, 400 Maryland Avenue, S.W., Washington, DC 20202 (202-447-9227).

The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242) to advise the Secretary of Health, Education, and Welfare and the Commissioner of Education concering matters arising in the administration of the Bilingual Education Act.

May 5, 1979: The proposed agenda for the General Council meeting includes:

(1) Call to Order.

(2) Approval of Minutes.

(3) Committee Reports.

(4) Finalization of Fiscal '79 Budget.

(5) Finalize Fiscal '79 Calendar.

May 6, 1979: The proposed agenda for the Business Meeting includes:

(1) Functions and General Introduction.

(2) Identification of Areas of Common Concern and Recommendations for Implementation:

a. PSA's—Public Service Announcements.

b. Publications.

c. Research.

(3) Support in Coordination of Activities:

a. Historical Perspective. Perspective of NACBE Past Activities.

b. Changes in NACBE Role.

c. Relationships with Clearinghouse, NIE, NCES and other agencies.

On *May 8–9, 1979,* in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics:

(1) Interim/Final Rules and Regulations.

(2) Bilingual Education In General.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis;

(2) Witnesses shall limit their testimony to fifteen minutes: ten minutes of formal presentation followed by five of questioning from Council members;

(3) Two or more persons from the same organization shall designate one person to speak for the group;

(4) Witnesses shall present an oral synopsis of their written testimony. Witnesses who do not provide such a testimony will be heard after all who have written testimony are heard;

(5) Witnesses shall provide fifteen copies of their written testimony;

(6) Witnesses may address the Council in either English or in their native language. The written testimony must be submitted in English;

(7) All testimony shall be tape recorded;

(8) Exceptions to the aforementioned procedures shall be at the discretion of the Chairman of the Public Hearings Committee.

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the Full Council, of said records has been obtained. These records will be available in Room 421, Reporters Building, 300 7th Street, S.W., Washington, D.C. 20202. In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, D.C., on April 11, 1979.

Josué M. González,

Director, Office of Bilingual Education.

[FR Doc. 79–11861 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–02–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Fund for the Improvement of Postsecondary Education; Closing Date for Receipt of Applications for New Awards for Fiscal Year 1979

Applications are invited for new grants under a targeted competition conducted under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education. This competition is entitled "Postsecondary Youth Program" and is funded through an inter-agency agreement between the Department of Labor and the Department of Health, Education, and Welfare.

Authority for this program is contained in section 404 of the General Education Provisions Act (20 U.S.C. 1221d).

This program issues awards to institutions of postsecondary education and other public and private education-related institutions and agencies.

The purpose of the awards is to improve postsecondary education.

Closing Date for Transmittal of Applications: Applications for awards must be mailed (postmarked) or hand delivered by June 11, 1979.

Applications Delivered by Mail: All applications sent by mail must be addressed to "Postsecondary Youth Program" at the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202. Proof of mailing may consist of a legible U.S. Postal Service dated postmark or a legible mail receipt stamped with the date of mailing by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service. (NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C.

The Office of the Assistant Secretary 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.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

Program Information: This competition solicits proposals for projects that will further one or more of the objectives of the Fund for the Improvement of Postsecondary Education. The objectives of the Fund are contained in 45 CFR 1501.8. The preapplication and application steps will be combined for this competition. A single application is thus required, but procedures applicable at both steps will apply in this competition. Applications will be evaluated in accordance with the criteria contained in 45 CFR 1501.7. The Fund's objectives, evaluation criteria, and application procedures for this competition are described in the publication: "AN HEW/DOL program—unemployed youth: A postsecondary response." This document may be obtained from the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202.

Available Funds: Approximately $1,000,000 is expected to be available for new grant awards in Fiscal Year 1979 for this competition.

It is estimated that these funds could support between 16–20 new grants. The anticipated award for new grants will be between $40,000 and $60,000. The award period will begin in September or October 1979, and must terminate by January 31, 1981.

These estimates do not bind the Assistant Secretary for Education except as may be required by applicable statute and regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by April 17, 1979. Institutions and persons can obtain the material from the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained

in 45 CFR Part 1501. Awards are also subject to the provisions contained in 45 CFR Parts 100 and 100a, except that awards are not subject to the provisions of 45 CFR 100a.26(b) relating to criteria for awards.

Further Information: For further information contact the Fund for the improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202. Telephone (202) 245–8091.

(20 U.S.C. 1221d)

(Catalog of Federal Domestic Assistance No. 13.925, Fund for the Improvement of Postsecondary Education.)

Dated: April 11, 1979.

Mary F. Berry,

Assistant Secretary for Education.

[FR Doc. 79–11835 Filed 4–16–79; 8:45 am]

BILLING CODE 4110–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska; Proposed Withdrawal and Reservation of Lands

The U.S. Army Corps of Engineers, on December 24, 1975, filed application, serial No. A–023002, for the withdrawal of the following described lands from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, subject to valid existing rights:

Fort Richardson-Davis Range

Seward Meridian, Alaska

T. 12 N., R. 1 W.,
Sec. 6, W½;
Sec. 7, W½;
Sec. 18, N½NW¼, N½S½NW¼.
T. 12 N., R. 2 W.,
Secs. 1 and 2;
Sec. 3, N½NE¼, SE¼NE¼;
Sec. 11, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 12;
Sec. 13, N½N½, N½S½NE¼, N½SE¼NW¼.

Contains 3,340 acres, more or less.

The applicant agency desires that the lands be withdrawn and reserved for continued use in conjunction with the military training activities at Fort Richardson, specifically cold weather survival, mountain and rock climbing, avalanche and tactical training.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management on or before May 25, 1979.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, on or before May 25, 1979. Notice of the public hearing will be published in the **Federal Register** giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16 B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the **Federal Register.** The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above-described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands and Minerals Operations, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Robert E. Sorenson,

Chief, Branch of Lands and Minerals Operations.

[A–023002]

[FR Doc. 79–11822 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Paria Canyon, Paiute, and Vermillion Cliffs Wilderness; Intent To Prepare an Environment Statement

The Department of the Interior, Bureau of Land Management, Arizona Strip District Office, will prepare an Environmental Impact Statement on three Instant Study Areas in the Arizona Strip District in northwest Arizona. The three areas are: Paiute Primitive Area, Paria Canyon Primitive Area and the Vermillion Cliffs Natural Area. The Federal Land Policy and Management Act of 1976 (Public Law 94–579) required those areas formally identified as natural or primitive areas prior to November 1, 1975 to be studied and reported to the President by July 1, 1980 as to their suitability or nonsuitability for inclusion in the Wilderness system.

The statement will analyze impacts on the environment of various alternatives of each of the three areas. The statement will consider as a minimum the following alternatives: (1) No action—the management would remain as it is at the present time, (2) Designation as wilderness, (3) Reduce in size and designate as wilderness, (4) delay any recommendation for designation or nondesignation until inventory and planning are complete on the contiguous public lands.

There will be public meetings held in Mid-May at locations yet to be selected. These meetings will be workshops and a public review of the planning proposals covering the wilderness areas. The locations and times of these meetings will be published later.

The data base for the environmental statement will be the Bureau's planning documents. These documents were prepared by the Bureau with input from other agencies, user groups and interested parties. The planning documents will be available for inspection at the BLM District Office, 196 E. Tabernacle, St. George, Utah 84770.

For information regarding the proposal and the environmental statement, contact either of the following individuals:

Dennis Carter, Project Leader, Arizona Strip District, BLM, 196 E. Tabernacle, St. George, Utah 84770, Telephone 801–628–0426.

William Carter, Environmental Coordinator, Arizona State Office, BLM, 2400 Valley Bank Center, Phoenix, Arizona 85073, Telephone FTS 261–4127, Commercial 602–261–4127.

Dated: April 6, 1979.

Robert O. Buffington,

State Director Arizona.

[FR Doc. 79–11824 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–84–M

New Mexico; Applications

April 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 25 S., R. 27 E.,
Sec. 28, SW¼NE¼ and N½SE¼;
Sec. 34, W½NW¼, SE¼NW¼, E½SW¼ and SW¼SE¼.
T. 26 S., R. 27 E.,
Sec. 3, N½NE¼, SE¼NE¼ and NE¼SE¼;
Sec. 11, N½NW¼, SE¼NW¼, NE¼SW¼ and NW¼SE¼.
T. 25 S., R. 27 E.,
Sec. 25, E½W½.
T. 26 S., R. 27 E.,
Sec. 1, E½W½.

These pipelines will convey natural gas across 5.108 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to expreess their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[NM 36447; 36456]

[FR Doc. 79–11826 4–16–79 8:45 am]

BILLING CODE 4310–84–M

New Mexico; Application

April 4, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipelines right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 20 S., R. 27 E.,
Sec. 12, S½SW¼ and SW¼SE¼.

These pipelines will convey natural gas across 0.684 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the Disrict Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations

[NM 36455]

FR Doc. 79–11825 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–84–M

Washington; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, on October 3, 1972, filed application Serial No. OR 11479 (Wash.) for a withdrawal in relation to the following described lands:

Willamette Meridian

T. 40N., R. 27 E.,
Sec. 7: SE¼ SE¼,
Sec. 18: NE¼ NE¼.

The area described contains 80 acres in Okanogan County, Washington.

The applicant desires that the land be reserved for educational, scientific, and research purposes in connection with the proposed Hot Lake Research Natural Area.

A notice of the proposed withdrawal was published in the **Federal Register** on March 24, 1975, Vol. 40, page 13013, FR Doc. 75–7568.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, at the address shown below, on or before May 15, 1979. Notice of the public hearing will be published in the **Federal Register**, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before May 15, 1979.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except public hearing requests) in connection with this pending withdrawal application should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 30, 1979.

Harold A. Berends,

Chief, Branch of Lands, and Minerals Operations.

[OR 11479 (Wash.); 2310 (943.4)]

[FR Doc. 79–11827 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Audubon Park and Zoological Garden, New Orleans, Louisiana, PRT 2–4085.

The applicant requests a permit to purchase in interstate commerce one (1) male and one (1) female clouded leopard (*Neofelis nebulosa)* from the Rare Feline Breeding Compound, Center Hill, Florida, for exhibition and enhancement of propagation.

Applicant: Art Jones, Cactus Ranch, Portales, New Mexico, PRT 2–4097.

The applicant requests a permit to purchase in interstate commerce one (1) male Seladang gaur (*Bos gaurus)* from the Oklahoma Zoo, Oklahoma City, Oklahoma, for enhancement of propagation.

Humane care and treatment during transport, if applicable, 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.

Interested persons may comment on these applications on or before May 17, 1979, by submitting written data, views, or arguments to the Director at the above address.

Dated: April 10, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11837 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Charles C. Nugent, 72474 Mica Rd., Kimbolton, Ohio 43749.

The applicant requests a permit to buy one pair of nene geese (*Branta sandvicensis*) in interstate commercial activity for propagation purposes from Mr. David Fraylor, Emporia, Kansas.

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 2–4082. 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 17, 1979. Please refer to the file number when submitting comments.

Dated: April 10, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11840 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Idaho Cooperative Wildlife Research Unit, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho 83843.

The applicant requests a permit to import up to 20 whooping crane (*Grus americana*) eggs per year for two years from Canada to be placed under greater sandhill crane (*Grus canadensis*) parents and to band and observe offspring for scientific research.

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 normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or be writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–239. 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 17, 1979. Please refer to the file number when submitting comments.

Dated: April 11, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11843 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112.

The applicant requests a permit to export one pair of nene (*Branta sandvicensis*) to Canada for propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submited 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 2–4084. 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 17, 1979. Please refer to the file number when submitting comments.

Dated: April 10, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11841 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Applications

The permit holders listed below request renewal of their Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

These permit files and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these requests on or before May 17, 1979, by submitting written data, views, or arguments to the Director at the above address.

Applicant: Charles Sivelle, 41 Westcliff Dr., Dix Hills, New York (PRT 2–362).

Applicant: Vance B. Grannis, 9249 Barnes Ave. East, Inver Grove Heights, Minnesota (PRT 2–688).

Please refer to the individual applicant and the appropriately assigned PRT 2– number when submitting comments.

Dated: April 9, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79–11842 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Application

Applicant: Mrs. Virginia M. Burnett, 10071 Lake Dr. S.E., Salem, Oregon 97302.

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 in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business 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 2–4098. 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 17, 1979. Please refer to the file number when submitting comments.

Dated: April 10, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11838 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Correction

On Thursday, April 5, 1979, a Notice of Receipt of Application for Captive Self-Sustaining Population permits was published in the **Federal Register**, Volume 44, Number 67, page 20510. The following correction should be made. One of the applicants, William H. Meadons, 19637 Mariposa, California, was incorrectly listed as having permit file number PRT 2–3842. The correct file number is PRT 2–3942.

Dated: April 10, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office , U.S. Fish and Wildlife Service.

[FR Doc. 79–11839 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

Threatened Species Permit; Receipt of Application

Applicant: Howard McClintock, 3012 11th Avenue, Minneapolis, Minnesota 55407.

The applicant wishes to apply for a Captive-Shelf Sustaining Population permit authorizing the purchase and sale in interstate commerce of tigers (*Panthera tigris*), listed in 50 CFR Section 17.11 as T(C/P), for the purpose of propagation. 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 2–3887. 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 17, 1979. Please refer to the file number when submitting comments.

Dated: April 9, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79–11386 Filed 4–16–79; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of 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 April 6, 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 evaluation 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 27, 1979.

Charles Herrington,

Acting Keeper of the National Register.

ALABAMA

Montgomery County

Montgomery, *Tyson-Maner House*, 469 McDonough St.

Perry County

Marion, *Green Street Historic District*, 203–751 W. Green St.

ALASKA

Sitka Division

Sitka, *Cable House and Station*, Lincoln St.

CALIFORNIA

San Francisco County

San Francisco, *Phelps, Abner, House*, 1111 Oak St. (proposed move).

GEORGIA

Columbia County

Winfield vicinity, *Woodville.*

Muscogee County

Columbus, *Columbus Multiple Resource Area*, various locations in Columbus.

Whitfield County

Dalton, *Crown Mill Historic District*, U.S. 41.

IDAHO

Bingham County

Blackfoot, *St. Paul's Episcopal Church*, 72 N. Shilling Ave.

Payette County

Payette, *Payette City Hall and Courthouse*, 3rd Ave. and 8th St.

ILLINOIS

Madison County

Godfrey, *Godfrey, Benjamin, Memorial Chapel*, Godfrey Rd.

INDIANA

Marion County

Indianapolis, *Stumpf, George, House*, 3225 S. Meridian St.

Vanderburgh County

Evansville, *Soldiers and Sailors Memorial Coliseum*, 350 Court St.

Wells County

Bluffton, *Stewart-Studebaker House*, 420 W. Market St.

KENTUCKY

Warren County

Warren County Multiple Resource, Area, various locations in Warren County.

MINNESOTA

Sibley County

Henderson, *Old Sibley County Courthouse*, 6th and Main Sts.

Waseca County

Janesville vicinity, *Seha Sorghum Syrup Mill*, SE of Janesville off MN 60.

NEW MEXICO

Chaves County

Roswell vicinity, *Hondo Reservoir*, SW of Roswell.

Lea County

Maljamar vicinity, *Baish Oil Well Number One*, 2 mi. (3.2 km) S of Maljamar on NM 33.

McKinley County

Blackrock, *Zuni Dam*, off NM 53.

Torrance County

Moriarty vicinity, *Moriarty Eclipse Windmill*, 2 mi. (3.2 km) W of Moriarty off NM 222.

NORTH CAROLINA

Swain County

Bryson City vicinity, *Archeology Site Number 31 SW96* (also in Blount County, TN).

Bryson City vicinity, *Forney Creek CCC Campsite.*

Bryson City vicinity, *Proctor Gap Campsite.*

OHIO

Mahoning County

Younstown, *Our Lady of Mount Carmel Church*, off OH 289.

RHODE ISLAND

Providence County

East Providence, *Pomham Rocks Light Station*, Riverside Rd.

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Clifton Hill*, SW of Christiansted at 22 King's Quarter.
Christiansted vicinity, *Fort Louise Augusta*, NE of Christiansted.
Christiansted vicinity, *Longford Site*.
Christiansted vicinity, *Rust-op-Twist (Rust-up-Twist)* NW of Christiansted.
Frederiksted vicinity, *Ham's Bluff Light Station*, N of Frederiksted.
Frederiksted vicinity, *La Grange*, S of Frederiksted.
Frederiksted vicinity, *Sprat Hall*, N of Frederiksted.

St. Thomas Island

Charlotte Amalie vicinity, *St. Thomas Marine Railway*, S of Charlotte Amalie on Hassel Island.

VIRGINIA

Campbell County

Spring Mills vicinity, *Blenheim*, 2.4 mi. SW of Spring Mills.

Essex County

Chance vicinity, *Glencairn*, N of Chance off U.S. 17.

Petersburg (independent city)

Tabb Street Presbyterian Church, 21 W. Tabb St.

WISCONSIN

Brown County

Green Bay vicinity, *Baird Law Office*, SW of Green Bay in Heritage Hill State Park (proposed move).
Green Bay vicinity, *Tank Cottage*, SW of Green Bay in Heritage Hill State Park (proposed move)

Grant County

Potosi, *St. John Mine*, WI 133.

Rock County

Janesville, *Myers-Newhoff House*, 121 N. Parker Dr.

[FR Doc. 79-11443 Filed 4-16-79; 8:45 am]

BILLING CODE 4310-03-M

North Loup Division, Nebr.; Availability of Supplement to Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a supplement to the final environmental statement for the authorized North Loup Division, Nebraska. The final statement, designated INT FES 72-31, was filed with the Council on Environmental Quality and publicly distributed on September 18, 1972.

The supplement addresses the geology of the Calamus and Davis damsites, impacts on surface and ground-water quality in the service area, wildlife impacts, and research techniques for improving livestock and crop production without diminishing ground-water reserves by irrigation.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Department of the Interior, Bureau of Reclamation, Room 7622, Interior Building, Washington, D.C. 20240, Telephone (202) 343-4991.
Assistant Commissioner—Engineering and Research, Engineering and Research Center, Room 1010, Building 67, Denver Federal Center, Denver, Colorado 80225, Telephone (303) 234-2050.
Regional Director, Bureau of Reclamation, Lower Missouri Region, Room E-2418, Building 20, Denver Federal Center, Denver, Colorado 80225, Telephone (303) 234-3779.
Central Nebraska Projects Office, Second and Locust Streets, Grand Island, Nebraska 68801, Telephone (308) 382-3660.
Ord Construction Office, P.O. Box 130, Ord, Nebraska 68862, Telephone (308) 728-3316.
Libraries in Omaha, Lincoln, O'Neill, Burwell, Ord, Palmer, Taylor, Fullerton, Greeley, Scotia, North Loup, St. Paul, and Grand Island, Nebraska; and at Kearney State College, Chadron State College, Wayne State College, and the University of Nebraska at Omaha and Lincoln.

Single copies of the final statement, the supplement, and the technical appendices may be obtained on request to the Commissioner of Reclamation or the Regional Director at the addresses listed above. Copies of the final environmental statement and the supplement are available at no charge. There is a charge of $5.00 per copy for the technical appendices.

Dated: April 12, 1979.

Heather L. Ross,
Deputy Assistant Secretary of the Interior.

[INT FES 79-18]

[FR Doc. 79-11862 Filed 4-16-79; 8:45 am]

BILLING CODE 4310-09-M

Office of the Secretary

Proposed Central Utah Project Municipal and Industrial System; Public Hearings on Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Municipal and Industrial System of the Bonneville Unit, Central Utah Project. This statement INT DES 79-18 was filed with the Environmental Protection Agency April 5, 1979, and is available to the public as specified in the Notice of Availability.

The draft environmental statement describes a project that would include construction of Jordanelle Reservoir and Powerplant on the Provo River, completion of two aqueducts now under construction, and modification of 15 upper Provo River reservoirs. The existing Strawberry Reservoir would be the source of most of the water supply. This supply would be released into Utah Lake in exchange for Provo River water to be stored in Jordanelle Reservoir.

The primary purpose of the project would be to provide water for municipal and industrial needs in Salt Lake County and in northern Utah County. The project would also provide water for supplemental irrigation of presently irrigated land in the Heber-Francis area of Summit and Wasatch Counties and for generation of hydroelectric power. Flood control, recreation opportunities, and some esthetic values would be provided and measures to compensate fishery and wildlife losses would be included in the project.

To obtain views and comments from interested individuals and organizations relating to the environmental impacts of the proposed project, the Bureau will hold public hearings as follows: May 17 at 5:00 p.m. in the Wasatch County Building, Heber City, Utah, May 18 at 2:00 p.m. in the Salt Palace, Salt Lake City, Utah, and May 19 at 10:00 a.m. at Utah Technical College, Orem, Utah.

Oral statements will be limited to periods of 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker additional opportunity to comment after all scheduled speakers have been heard. Whenever possible, speakers will be scheduled according to the time preference requested. Speakers not present when called will lose their turn in the scheduled order, but will be given an opportunity to speak at the end of the scheduled presentations. Requests for scheduled presentations will be accepted up to 4:30 p.m. May 14, 1979. Subsequent requests will be handled at the hearing on a first-come-first-served basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearing should contact one of the following offices by letter or telephone: Regional Director, Bureau of Reclamation, P.O.

Box 11568, Salt Lake City, Utah 84147, Telephone Number 801–524–5520 or Project Manager, Bureau of Reclamation, P.O. Box 1338, Provo, Utah 84601, Telephone Number 801–374–8610.

Oral and written statements presented at the hearing will be summarized and responded to in the final environmental statement. Written comments for the hearing record from individuals unable to attend and from those wishing to supplement their oral presentations at the hearings should be sent to the Regional Director, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah 84147, so as to be received by May 21, 1979. Written comments received by this date will be printed in full in the final environmental statement.

Copies of the draft statement may be obtained at either of the two offices listed.

Dated: April 12, 1979.

R. Keith Higginson,
Commissioner.

[FR Doc. 79-11863 Filed 4-16-79 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

Certain Fish and Certain Shellfish From Canada; Determination of No Injury or Likelihood Thereof

On the basis of information developed during the course of investigation No. 303–TA–9, undertaken by the United States International Trade Commission under section 303(b) of the Tariff Act of 1930, as amended, the Commission determines unanimously [1] that an industry in the United States is not being injured, is not likely to be injured, and is not prevented from being established, by reason of the importation of certain fish and certain shellfish from Canada, provided for in items 110.1593, 110.1597, 110.4730, 110.4755, 110.4760, 110.4765, 114.4520, and 114.4537 of the Tariff Schedules of the Unites States Annotated (TSUSA), which merchandise is accorded duty-free treatment, and upon which the Department of the Treasurey has determined that a bounty or grant is being paid within the meaning of section 303 of the Tariff Act of 1930, as amended.

On January 9, 1979, the Commission received advice from the Department of the Treasury that a bounty or grant is being paid with respect to certain duty-free fish and certain duty-free shellfish imported from Canada that are entered under TSUSA items 110.1593, 110.1597, 110.4730, 110.4755, 110.4760, 110.4765, 114.4520, and 114.4537. Accordingly, the Commission, on January 18, 1979, instituted investigation No. 303–TA–9 under section 303(b) of the Tariff Act of 1930, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of institution of the investigation and public hearing was published in the **Federal Register** of January 24, 1979 (44 F.R. 5025). On February 27, 1979, a public hearing was held in Washington, D.C., at which any person interested in the proceeding was given the opportunity to appear by counsel or in person, to present information, and to be heard.

The Treasury investigation resulting in the countervailing duty determination was initiated as a result of a petition filed with Treasury on December 30, 1977, by the National Federation of Fishermen and the Point Judith Fishermen's Cooperative Association, Inc.

Statement of Reasons for Chairman Joseph O. Parker, Vice Chairman Bill Alberger, and Commissioners George M. Moore, Catherine Bedell, and Paula Stern

On the basis of evidence developed during this investigation we determine that an industry in the United States is not being injured, is not likely to be injured, and is not prevented from being established [2], by reason of the importation of certain duty-free fish and certain duty-free shellfish from Canada provided for in items 110.1593, 110.1597, 110.4730, 110.4755, 110.4760, 110.4765, 114.4520, and 114.4537 of the TSUS, upon which Treasury has determined a bounty or grant is being paid within the meaning of section 303 of the Tariff Act of 1930, as amended.

The Products Under Investigation and the Relevant U.S. Industry

The imported articles that are subject to this investigation are: (1) whole cusk, haddock, hake, and pollock, whether fresh, chilled, or frozen; (2) fish blocks made of Atlantic ocean perch, haddock, whiting, and other fish blocks except those made of cod, flatfish, or pollock; (3) live lobsters; and (4) scallops.

In this determination we consider the relevant U.S. industry to consist of those fishing boats and processing plants devoted to the catching or processing of the types of fish and shellfish described above.

Bounties and Grants

Treasury has determined the net amount of bounties or grants to be 1.17 percent of the f.o.b. price for export to the United States for groundfish originating in the Atlantic regions of Canada, and 1.08 percent for shellfish originating in the Atlantic regions of Canada. Treasury has further determined that the shellfish and groundfish originating in the rest of Canada receive benefits that are legally de minimis; therefore the Commission's investigation has not addressed alleged injury due to imports of such merchandise from areas other than the Atlantic regions of Canada. Treasury has informed the Commission that should the Commission make an affirmative decision in this investigation, Treasury intends to waive countervailing duties.

No Injury by Reason of Imports Receiving Bounties or Grants

Certain whole fish.—U.S. landings of all four species of whole fish under investigation increased from 42 million pounds in 1974 to 75 million pounds in 1977, an increase of 80 percent. Landings in major New England ports further increased from 50 million pounds during the period January-November 1977 to 67 million pounds in the period January-November 1978, an increase of more than 33 percent. [3] U.S. landings as a share of total U.S. and Canadian landings increased from 28 percent of total landings in 1974 to 36 percent of total landings in 1977.

The ratio of imports from Canada of the species of fish under investigation to apparent U.S. consumption fell from 16 percent in 1974 to 7 percent in 1977. The ratio of U.S. production to apparent U.S. consumption increased from 83 percent in 1974 to 92 percent in 1977. In view of the sharp rise in New England landings during the first 11 months of 1978, this ratio has probably continued to increase in 1978.

With the increase in apparent U.S. consumption of the species of whole fish under investigation of more than 60 percent from 1974 to 1977, the average U.S. ex-vessel price increased 67 percent from $0.15 a pound in 1974 to $0.25 a pound in January-November 1978. During this period, cusk ex-vessel prices increased by 38 percent, white hake prices doubled, and pollock prices increased by 64 percent. In addition, red hake prices increased by 33 percent

[1] Chairman Joseph O. Parker, Vice Chairman Bill Alberger, and Commissioners George M. Moore, Catherine Bedell, and Paula Stern concurred in the negative determination.

[2] Prevention of establishment is not an issue in this investigation and will not be addressed further in these views.

[3] Full year data of U.S. landings in 1978 are not yet available.

between 1974 and 1977. Despite the fact that the U.S. dollar has appreciated in relationship to the Canadian dollar, the Commission has no information that the prices for whole fish from Canada sold in the United States differ from those for U.S. whole fish.

Certain fish blocks.—Since fresh fish command higher prices per pound than frozen fish, virtually all fish landed in the United States are sold fresh. Processors freeze fish into blocks only when there is a temporary oversupply of fresh fish on the market. Production of fish blocks represents a small portion of a U.S. processor's operations. Of 4.1 billion pounds of fish landed in the United States in 1977, only 4.6 million pounds, or 0.1 percent of U.S. landings, were frozen into blocks.

U.S. production of all types of fish blocks accounted for about 1 percent of U.S. consumption of fish blocks for the years 1974–77. U.S. imports from Canada of the fish blocks under investigation accounted for less than 2 percent of U.S. apparent consumption of all types of fish blocks in 1977.

Global Seafoods, an affiliate of the Point Judith Fishermen's Cooperative, one of the petitioners in this investigation, plans to begin fish block production in 1979. This cooperative was unable to supply the Commission with any information that imports of the blocks under investigation injure, or are likely to injure, its production of fish blocks.

Live American lobsters.—U.S. lobstermen catch virtually all the legal size lobsters available each year. This catch has increased from 28.5 million pounds in 1974 to 31.7 million pounds in 1977, representing an increase of 11 percent. Landings in major ports further increased by 3 percent in January-October 1978 when compared with the same period in 1977.

Since U.S. lobstermen catch virtually all of the legal sized lobsters available, imports from Canada help meet U.S. demand. These imports, however, have fallen from 15.0 million pounds in 1975 to 12.2 million pounds in 1978, a decrease of 19 percent. The ratio of imports from Canada to apparent U.S. consumption declined from 35 percent in 1975 to 33 percent in 1977.

Average ex-vessel prices of American lobsters increased from $1.52 a pound in 1974 to $2.27 a pound in 1978, an increase of 49 percent; and average yearly wholesale prices of 1¼ pound American lobsters in New York increased by 39 percent from 1974 to 1978. In addition, the Commission has no information that lobsters imported from Canada undersell U.S. lobsters. Imports from Canada are greatest during the winter season, thus minimizing the impact of these imports upon the U.S. lobstermen, who fish primarily in the summer and fall.

Scallops.—U.S. landings of sea scallops quadrupled in the past 5 years from 6.4 million pounds in 1974 to more than 25 million pounds in 1977. They increased an additional 23 percent from 20.4 million pounds in January-October 1977 to 25.1 million pounds in the first 10 months of 1978. The number of scallop dredges over 5 tons in New England more than tripled from 31 vessels in 1974 to 115 in 1979.

This rapid increase in vessels and landings has led to increased employment opportunities for the scallop fishermen. Salaries of deckhands on scallop vessels ranged from $20,000 to $40,000 in 1978, and vessel owners netted between $40,000 and $100,000. Information obtained in the Commission's investigation indicates earnings of the scallop fishermen have been at recored levels.

With apparent annual U.S. consumption of sea scallops more than doubling in the past 5 years, average U.S. ex-vessel prices increased from $1.54 a pound in 1974 to $2.46 a pound in January-October 1978, an increase of 60 percent. Average ex-vessel prices have reached unprecedented highs in 1979, and have topped $3.65 a pound during some weeks.

Although imports of scallops from Canada increased from 12.1 million pounds in 1974 to 26.2 million pounds in 1977, they subsequently decreased to 24.3 million pounds in 1978, a decrease of more than 7 percent.

Canada's share of the U.S. scallop market has remained fairly steady in the past 5 years, ranging from 46 to 50 percent of apparent U.S. consumption.

No Likelihood of Injury

The advent of the 200-mile limit in 1977 dramatically expanded the area in which U.S. fishermen have exclusive rights to fish. The fishery management plans for haddock, red hake, pollock, American lobsters, and sea scallops initiated in conjunction with the establishment of the 200-mile limit will, for the first time, provide a comprehensive program for expanding U.S. production while at the same time conserving natural resources of sea food.

These plans project increasing harvests of haddock, hake, and lobster. Haddock, overfished in the mid-1960's, may soon recover to pre-1960's stock levels. Long term lobster production can be increased substantially by the implementation of several recommendations contained in the lobster management plan.

Conclusion

Based on the foregoing, it is our determination that a U.S. industry is not being injured and is not likely to be injured by reason of the importation of certain duty-free fish and shellfish from Canada which Treasury has determined are subject to countervailable bounties or grants.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[303–TA–9]

[FR Doc. 79–11924 Filed 4–16–79; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Solicitation for Grant Application To Evaluate the Child Advocacy Unit of the Philadelphia Defenders' Association

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice, is sponsoring an evaluation of the Child Advocacy Unit of the Philadelphia Defenders' Association.

Applications will be considered from private or public agencies and organizations or individuals. The maximum funding level for this six (6) month effort is $75,000. The deadline for receipt of applications is May 31, 1979. Potential applicants may obtain a copy of the solicitation by writing to: National Institute for Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, N.W., Room 304, Washington, D.C. 20531, attention: Deborah Wysinger; or by calling area code 202–376–3645.

John M. Rector,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 79–11828 Filed 4–16–79; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular spring meetings of committees of the Labor Research

Advisory Council will be held on May 22, 23, and 24 in Room 4454, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The schedule and agenda of the meetings are as follows:

Tuesday, May 22

9:30 a.m.—Committee on Prices and Living Conditions
1. Program developments in 1980 budget proposal
(a) Producer Price Index program
(b) International Price program
2. Family Budgets and the Family Budget Committee
3. Experience with local area Consumer Price Indexes
4. Status reports
(a) Continuing Consumer Expenditure Survey
(b) Releases on average price data for food, gasoline and fuels and utilities

Tuesday, May 22

1:45 p.m.—Committee on Occupational Safety and Health Statistics
1. Recent program developments
2. Annual survey data and sample reduction
3. Recordkeeping and supplementary data systems
4. Program Assistance and Work Injury Reports

Wednesday, May 23

9:30 a.m.—Committee on Employment Structure and Analysis
1. National Commission on Employment and Unemployment Statistics—potential impact on BLS
2. Usual Hours and Earnings—development of quarterly data through the Current Population Survey
3. Standard Occupational Classification developments and implications
4. Local Area Unemployment Statistics—potential changes in procedures

Wednesday, May 23

1:30 p.m.—Committee on Wages and Industrial Relations
1. Review of work in progress
2. Meeting of Subcommittee on Long-Range Planning
3. Fiscal Year 1980 budget experience
4. Demographic characteristics of union members
5. Relationships with Council on Wage and Price Stability

Thursday, May 24

9:30 a.m.—Committee on Foreign Labor and Trade
1. Trade Monitoring System developments
2. Comparative compensation levels
3. Iron and steel productivity comparisons
4. Other developments

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1247.

Signed at Washington, D.C. this 9th day of April 1979.

Janet L. Norwood,
Acting Commissioner of Labor Statistics.
[FR Doc. 79–11941 Filed 4–16–79; 8:45 am]
BILLING CODE 4510–24–M

Mine Safety and Health Administration

Allied Chemical; Petition for Modification of Application of Mandatory Safety Standard

Allied Chemical, P.O. Box 551, Green River, Wyoming 82935, has filed a petition to modify the application of 30 CFR 57.21–40 (methane gas concentrations) to its AlChem Mine, located in Green River, Wyoming. This petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95–164.

The substance of the petition follows:

1. The petitioner operates a large underground trona mine which is classified as a gassy mine. However, trona dust is nonflammable.

2. The petitioner uses conventional and continuous miner room and pillar and longwall mining methods. Gob areas are created when the petitioner mines through pillars.

3. The gob areas are not working places nor are they accessible to miners. The petitioner has no way to control the tightness of density of the gob, the rate of methane gas generation, or barometric pressures, all factors which cause the volume of air sweeping the gob to fluctuate.

4. The petitioner requests permission to ventilate the gob areas through controlled access bleeders directly to the mine's return air system, allowing methane gas to reach levels of two percent in the bleeders.

5. The petitioner states that its request to use the bleeder system to ventilate longwall gob areas follows applications provided for in MSHA's coal standards and that this method will not result in a diminution of the safety of its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 17, 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 11, 1979.

Robert B. Lagather,
Assistant Secretary for Mine Safety and Health.

[Docket No. M–79–11–M]
[FR Doc. 79–11933 Filed 4–16–79; 8:45 am]
BILLING CODE 4510–43–M

Extractors Inc.; Petition for Modification of Application of Mandatory Safety Standard

Extractors Inc. Box 69, Keyrock Road, Pineville, West Virginia 24874, has filed a petition to modify the application of 30 CFR 75.1710 (canopies), to its No. 1 Deep mine, located in Wyoming County, West Virginia. This petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95–164.

The substance of the petition follows:

1. The petitioner is mining coal seams averaging 41 to 48 inches in height.

2. Due to rolls in the mine floor, canopies on the petitioner's electric face equipment at times collide with and damage the mine's roof support.

3. A canopy seriously impairs an equipment operator's view of his fellow workers and of the immediate working area, creating the potential for a serious accident.

4. In order to improve their view of the working area, equipment operators tend to lean out from under the canopy, exposing themselves to possible head injuries.

5. After working a shift under the confines of a canopy, equipment operators experience cramps and stiff joints in their legs and have difficulty walking.

6. In order to make sufficient room for the equipment operator, the petitioner has taken the seats out of its equipment leaving only bare metal. However, this action has given rise to its own problems, mainly the pain and discomfort of hemorrhoids.

7. For these reasons, the petitoner states that the application of the standard to its mine will result in a diminution of safety to its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 17, 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 10, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-21-C]

[FR Doc. 79-11932 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-43-M

G. B. Corp.; Petition for Modification of Application of Mandatory Safety Standard

G. B. Corporation, P.O. Box 340, Clintwood, Virginia 24228, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 1 Mine, located in Wise County, Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petitioner is mining coal seams which average from 44 to 54 inches in height.

2. The petitioner's scoop with canopy installed would measure 54 inches in height.

3. The petitioner cannot use a smaller scoop in its mine because soft bottom conditions would impede its movement.

4. A canopy on the petitioner's present scoop would disturb the mine's roof support, possibly causing roof falls.

5. The cramped and confined position of the scoop operator under a canopy would impair his control of the scoop and restrict his view of the surrounding working area.

6. For these reasons, the petitioner states that the application of the standard to its scoop would result in a diminution of safety to its miners and requests relief from such application until it encounters higher seam heights and better bottom conditions.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 17, 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 10, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-36-C]

[FR Doc. 79-11935 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-43-M

Kennecott Copper Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kennecott Copper Corporation, P.O. Box 11299, Salt Lake City, Utah 84147, has filed a petition to modify the application of 30 CFR 55.12-15 (electrical grounding), to its Bingham Canyon Mine, located in Salt Lake County, Utah, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. Application of the standard to the petitioner's mine would require the petitioner to ground its steel towers supporting overhead, high-potential power lines.

2. The petitioner has about 2,300 such towers at its mine, and mining practices necessitate that the towers be continually moved and relocated.

3. The mobile nature of these towers would make it extremely difficult for the petitioner to assure that all of them are always grounded.

4. An an alternative, the petitioner proposes the following:

(a) Automatic devices will be connected to the feeder circuitry which supplies current to the power lines supported by the towers. Upon detection of a grounded power line, resulting from either accidental contact of the line with a tower or contact of grounded equipment with the line, the devices automatically will cut the current to the lines.

(b) The petitioner will place signs on all its steel towers warning of potential danger and prohibiting persons from contacting the towers in any fashion.

(c) The petitioner will advise its employees during training of the electrical hazards associated with its towers and will instruct all its employees assigned to work in areas around the towers not to come into contact with the towers under any circumstances. Electricians and linemen who must work on the towers will be trained appropriately.

4. The petitioner states that this alternative will achieve no less protection for its empolyees than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before May 17, 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 10, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-11934 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

Occupational Safety and Health Administration

Interagency Agreement

The Mine Safety and Health Administration (MSHA), U.S. Department of Labor, and the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, have entered into this agreement to delineate certain areas of authority, set forth factors regarding determinations relating to convenience of administration, provide a procedure for determining general jurisdictional questions, and provide for coordination between MSHA and OSHA in all areas of mutual interest.

A. Authority and Principle

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164 (Mine Act), authorizes the Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted.

2. The Occupational Safety and Health Act of 1970 (OSH Act) gives the Secretary of Labor authority over all working conditions of employees engaged in business affecting commerce except those conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health. The OSH Act also provides that States may operate their own occupational safety and health programs under a plan approved by the Secretary.

3. This agreement is entered into to set forth the general principle and specific procedures which will guide MSHA and OSHA. The agreement will also serve as guidance to employers and employees in the affected industries in determining the jurisdiction of the two statutes involved. The general principle is that as to unsafe and unhealthful working conditions on mine sites and in milling operations, the Secretary will apply the provisions of the Mine Act and standards promulgated thereunder to eliminate those conditions. However,

where the provisions of the Mine Act either do not cover or do not otherwise apply to occupational safety and health hazards on mine or mill sites (e.g., hospitals on mine sites) or where there is statutory coverage under the Mine Act but there exist no MSHA standards applicable to particular working conditions on such sites, then the OSH Act will be applied to those working conditions. Also, if an employer has control of the working conditions on the mine site or milling operation and such employer is neither a mine operator nor an independent contractor subject to the Mine Act, the OSH Act may be applied to such an employer where the application of the OSH Act would, in such a case, provide a more effective remedy than citing as a mine operator or an independent contractor subject to the Mine Act who does not, in such circumstances, have direct control over the working conditions.

B. Clarification of Authority

1. Section 4 of the Mine Act gives MSHA jurisdiction over each coal or other mine and each operator of such mine. Section 3(d) defines "operator" and includes in that definition independent contractors performing construction at mines.

2. Section 3(h)(1) of the Mine Act gives MSHA jurisdiction over lands, structures, facilities, equipment, and other property used in, to be used in, or resulting from mineral extraction or used in or to be used in mineral milling. This includes the authority to regulate the construction of such facilities, structures and other property. Further, Section 3(h)(1) directs the Secretary of Labor, in making a determination of what constitutes mineral milling, to give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment.

3. Appendix A provides more detailed descriptions of the kinds of operations included in mining and milling and the kinds of ancillary operations over which OSHA has authority. Notwithstanding the clarification of authority provided by Appendix A, there will remain areas of uncertainty regarding the application of the Mine Act, especially in operations near the termination of the milling cycle and the beginning of the manufacturing cycle.

4. Under section 3(h)(1), the scope of the term milling may be expanded to apply to mineral product manufacturing processes where these processes are related, technologically or geographically, to milling. Or, the term milling may be narrowed to exclude from the scope of the term processes listed in Appendix A where such processes are unrelated, technologically, or geographically, to mineral milling. Determinations shall be made by agreements between MSHA and OSHA.

5. The following factors, among others, shall be considered in making determinations of what constitutes mineral milling under section 3(h)(1) and whether a physical establishment is subject to either authority by MSHA or OSHA: the processes conducted at the facility, the relation of all processes at the facility to each other, the number of individuals employed in each process, and the expertise and enforcement capability of each agency with respect to the safety and health hazards associated with all the processes conducted at the facility. The consideration of these factors will reflect Congress' intention that doubts be resolved in favor of inclusion of a facility within the coverage of the Mine Act.

6. Pursuant to the authority in section 3(h)(1) to determine what constitutes mineral milling considering convenience of administration, the following jurisdictional determinations are made:

a. MSHA jurisdiction includes salt processing facilities on mine property; electrolytic plants where the plants are an integral part of milling operations; stone cutting and stone sawing operations on mine property where such operations do not occur in a stone polishing or finishing plant; and alumina and cement plants.

b. OSHA jurisdiction includes the following, whether or not located on mine property: brick, clay pipe and refractory plants; ceramic plants; fertilizer product operations; concrete batch, asphalt batch, and hot mix plants; smelters and refineries. OSHA jurisdiction also includes salt and cement distribution terminals not located on mine property, and milling operations associated with gypsum board plants not located on mine property.

7. "Borrow Pits" are subject to OSHA jurisdiction except those borrow pits located on mine property or related to mining. (For example, a borrow pit used to build a road or construct a surface facility on mine property is subject to MSHA jurisdiction). "Borrow pit" means an area of land where the overburden, consisting of unconsolidated rock, glacial debris, or other earth material overlying bedrock is extracted from the surface. Extraction occurs on a one-time only basis or only intermittently as need occurs, for use as fill materials by the extracting party in the form in which it is extracted. No milling is involved, except for the use of a scalping screen to remove large rocks, wood and trash. The material is used by the extracting party more for its bulk than its intrinsic qualities on land which is relatively near the borrow pit.

8. When any question of jurisdiction between MSHA and OSHA arises, the appropriate MSHA District Manager and OSHA Regional Administrator or OSHA State Designee in those States with approved plans shall attempt to resolve it at the local level in accordance with this Memorandum and existing law and policy. Jurisdictional questions that can not be decided at the local level shall be promptly transmitted to the respective National Offices which will attempt to resolve the matter. If unresolved, the matter shall be referred to the Secretary of Labor for decision.

C. Enforcement Procedures

In the interest of administrative convenience and the efficient use of resources the agencies agree to the following enforcement procedures:

1. When OSHA receives information concerning unsafe or unhealthful working conditions in an area for which MSHA has authority for employee safety and health, OSHA will forward that information to MSHA.

2. When MSHA receives information regarding a possible unsafe or unhealthful condition in an area for which MSHA has authority and determines that such a condition exists but that none of the Mine Act's provisions with respect to imminent danger authority or any enforceable standards issued thereunder provide an appropriate remedy, then MSHA will refer the matter to OSHA for appropriate action under the authority of the OSH Act.

3. When MSHA receives information regarding unsafe or unhealthful working conditions in an area for which OSHA has authority for employee safety and health, MSHA will forward that information to OSHA for appropriate action.

4. Each agency agrees to notify the other of the disposition of enforcement matters forwarded to it for appropriate action.

5. OSHA will not conduct general inspections of mine or mill sites except with respect to those areas set forth in this Agreement and its Appendix A.

D. Interagency Coordination

1. The Office of Legislative and Interagency Affairs in OSHA and the

Office of the Assistant Secretary in MSHA shall serve as liaison points to facilitate communication and cooperation between the participating organizations.

2. MSHA and OSHA will endeavor to develop compatible safety and health standards, regulations, and policies with respect to the mutual goals of the two organizations including joint rulemaking, where appropriate. This interagency coordination may also include cooperative training, shared use of facilities, and technical assistance.

E. Subagreements

Subagreements to accomplish the purposes set by this agreement may be developed and modified, as deemed necessary, by OSHA and MSHA. Such subagreements will include specific provisions for detailing the coordination between the agencies.

F. Period of Agreement

This Interagency Agreement shall continue in effect unless modified or terminated by mutual consent of both parties or terminated by either party upon thirty (30) days advance written notice to the other and approved by the Secretary in either case.

This agreement will become effective on the date of the last signature and it supersedes the Memorandum of Understanding between OSHA and MSHA dated April 22, 1974.

Dated: March 29, 1979.

Mine Safety and Health Administration.

Robert B. Lagather,

Assistant Secretary of Labor for Mine Safety and Health.

Dated: March 29, 1979.

Occupational Safety and Health Administration.

Eula Bingham,

Assistant Secretary of Labor for Occupational Safety and Health.

Approved dated: March 29, 1979.

Ray Marshall,

Secretary of Labor.

Appendix A

Definitions

"Coal or other mine" is defined in the Mine Act as:

"(A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers undeground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities."

"Miner" is defined in the Mine Act as:

"Any individual working in a coal or other mine."

"Operator" is defined in the Mine Act as:

"Any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine."

"Mining and Milling":

Mining has been defined as the science, technique, and business of mineral discovery and exploitation. It entails such work as directed to the severence of minerals from the natural deposits by methods of underground excavations, opencast work, quarrying, hydraulicking and alluvial dredging. Minerals so excavated usually require upgrading processes to effect a separation of the valuable minerals from the gangue constituents of the material mined. This latter process is usually termed "milling" and is made up of numerous procedures which are accomplished with and through many types of equipment and techniques.

Milling is the art of treating the crude crust of the earth to produce therefrom the primary consumer derivatives. The essential operation in all such processes is separation of one or more valuable desired constituents of the crude from the undesired contaminants with which it is associated.

A *Crude* is any mixture of minerals in the form in which it occurs in the earth's crust. An ORE is a solid crude containing valuable constituents in such amounts as to constitute a promise of possible profit in extraction, treatment, and sale. The valuable constituents of an ore are ordinarily called *valuable minerals*, or often just *minerals;* the associated worthless material is called *gangue.*

In some ores the mineral is in the chemical state in which it is desired by primary consumers, e.g., graphite, sulphur, asbestos, talc, garnet. In fact, this is true of the majority of nonmetallic minerals. In metallic ores, however, the valuable minerals in their natural state are rarely the product desired by the consumer, and chemical treatment of such minerals is a necessary step in the process of beneficiation. The end products are usually the result of concentration by the methods of ore dressing (milling) followed by further concentration through metallurgical processes. The valuable produce of the oredressing treatment is called *Concentrate;* the discarded waste is *Tailing.**

Specific Examples of MSHA Authority

Mining—MSHA

Following is a list indicating mining operations and minerals for which MSHA has authority to regulate.

Mining Operations

Underground mining.

Open pit mining.

Quarrying.

Solution mining (Precipitate & Leaching).

Dredging (When the primary purpose of the dredging operation is to recover metal or nonmetallic minerals for milling and/or sale or use).

Hydraulicking.

Ponds—brine evaporation.

Auger Mining.

Minerals

Coal.

Metals

(Included but not limited to)

Alumina, antimony, bauxite, beryl, bismuth, chrome, cobalt, copper, gold, iron, lead, manganese, mercury, molybdenum, nickel, rare earths, silver, titanium, tungsten, uranium, vanadium, zinc, zirconium.

Nonmetals

(Included but not limited to)

Abrasives, aplite, asbestos, barite, baron, bromine, calcium chloride, clay, mica, mineral pigments, oil shale, peat, perlite, potash, pumice, potash rock, diatomite, feldspar, fluorspar, gilsonite, graphite, gypsum, kyanite, magnesite, salt, shale, sodium compounds, sulfur, talc, soapstone, and pyrophyllite, vermiculite, wollastonite.

Subgroups of Nonmetals

(Sand and Gravel, and Crushed and Dimension Stone Industries)

Sand, Gravel, Cement, Gabbro, Gneiss, Lime, Limestone, Marble, Native Asphalt (impregnated stone & sand), Quartizite, Schist, Slate, Taprock or Diabase.

Milling—MSHA Authority

Following is a list with general definitions of milling processes for which MSHA has authority to regulate subject to Paragraph B6 of the Agreement. Milling consists of one or more of the following processes: crushing, grinding, pulverizing, sizing, concentrating, washing, drying, roasting, pelletizing, sintering, evaporating, calcining, kiln treatment, sawing and cutting stone, heat expansion, retorting (mercury), leaching, and briquetting.

Crushing

Crushing is the process used to reduce the size of mined materials into smaller, relatively coarse particles. Crushing may be done in one or more stages, usually preparatory for the sequential stage of grinding, when concentration of ore is involved.

Grinding

Grinding is the process of reducing the size of a mined product into relatively fine particles.

Pulverizing

Pulverizing is the process whereby mined products are reduced to fine particles, such as to dust or powder size.

Sizing

Sizing is the process of separating particles of mixed sizes into groups of particles of all

*Preface, p.v., Handbood of Mineral Dressing, Authur P. Taggart, Second Printing, March 1947, John Wiley and Sons, Inc.

the same size, or into groups in which particles range between maximum and minimum sizes.

Concentrating

Concentrating is the process of separating and accumulating economic minerals from gangue, or the upgrading of ore or minerals.

Washing

Washing is the process of cleaning mineral products by the buoyant action of flowing water.

Drying

Drying is the process of removing uncombined water from mineral products, ores, or concentrates, for example, by the application of heat, in air-actuated vacuum type filters, or by pressure type equipment.

Roasting

Roasting is the process of applying heat to mineral products to change their physical or chemical qualities for the purpose of improving their amenability to other milling processes.

Pelletizing

Pelletizing is the process in which finely divided material is rolled in a drum, cone, or on an inclined disk so that the particles cling together and roll up into small spherical pellets. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Sintering

Sintering is the process of agglomerating small particles to form larger particles, cakes or masses, usually by bringing together constituents through the application of heat at temperatures below the melting point.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Evaporating

Evaporating is the process of upgrading or concentrating soluble salts from naturally occurring, or other brines, by causing uncombined water to be removed by application of solar or other heat.

Calcining

Calcining is the process of applying heat to mineral materials to upgrade them by driving off volatile chemically combined components and effecting physical changes.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Kiln Treatment

Kiln Treatment is the process of roasting, calcining, drying, evaporating, and otherwise upgrading mineral products through the application of heat.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling process.

Sawing and Cutting Stone

Sawing and cutting stone is the process of reducing quarried stone to smaller sizes at the quarry site when the sawing and cutting is not associated with polishing or finishing.

Heat Expansion

Heat expansion is a process for upgrading material by sudden heating of the substance in a rotary kiln or sinter hearth to cause the material to bloat or expand to produce a lighter material per unit of volume.

Retorting

Retorting is a process usually performed at certain mine sites, and is accomplished by heating the crushed material in a closed retort to volatilize the metal, material or hydrocarbon which is then condensed and recovered as upgraded metal, material or hydrocarbon.

Leaching

Leaching is the process by which a soluble metallic compound is removed from a mineral by selectively dissolving it in a suitable solvent, such as water, sulfuric acid, hydrocholoric acid, cyanide, or other solvent, to make the compound amenable to further milling processes.

Briquetting

Briquetting is a process by which iron ore, or other pulverized mineral commodities, are bound together into briquettes, under pressure, with or without a binding agent, and thus made conveniently available for further processing.

MSHA Authority Ends—OSHA Authority Begins

Subject to Paragraph B.5. of the Agreement, the following are types of operations which may be on or contiguous to mining and/or milling operations listed above, over which MSHA does not have authority to prescribe and enforce employee safety and health standards, and over which OSHA has full authority, under the Act, to prescribe and enforce safety and health standards regarding working conditions of employees.

OSHA regulatory authority commences as indicated in the following types of operations:

Gypsum Board Plant

If the plant is located on mine property, commences at the point when milling, as defined, is completed, and the gypsum and other materials are combined to enter the sequential processes necessary to produce gypsum board. If not located on mine property, OSHA has authority over entire plant.

Brick, Clay Pipe and Refractory Plants

Commences after arrival of raw materials at the plant stockpile.

Ceramic Plant

Commences after arrival of the clay and other additives at the plant stockpile.

Fertilizer Products

Commences at the point when milling, as defined, is completed, and two or more raw materials are combined to produce another product. Note that a "kiln", as it relates to these products for roasting and drying, is considered to be within the scope of the milling definition.

Asphalt-Mixing Plant

Commences after arrival of sand and gravel or aggregate at the plant stockpile.

Concrete Ready-Mix or Batch Plants

Commences after arrival of sand and gravel or aggregate at the plant stockpile.

Custom Stone Finishing

Commences at the point when milling, as defined, is completed, and the stone is polished, engraved, or otherwise processed to obtain a finished product and includes sawing and cutting when associated with polishing and finishing.

Smelting

Commences at the point where milling, as defined, is completed, and metallic ores or concentrates are blended with other materials and are thermally processed to produce metal.

Electrowinning

Commences at the point where milling, as defined, is completed, and metals are recovered by means of electrochemical processes.

Salt and cement distribution terminals not located on mine property.

Refining

Commences at the point where milling, as defined, is completed, and material enters the sequential processes to produce a product of higher purity.

[FR Doc. 79-11930 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Puerto Rico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628), of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State

standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

By letter dated April 20, 1978, from Assistant Secretary Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, the State submitted standards comparable to the Occupational Safety and Health Standards for General Industry, 29 CFR Part 1910 and Construction, 29 CFR Part 1926. To incorporate omissions from these standards, the State has submitted by letter dated January 8, 1979, from Assistant Secretary John Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration Permanent Standards for Temporary Flooring Requirements, 29 CFR 1926.750, as published in the **Federal Register** (39 FR 24360), dated July 2, 1974 and for Recodification of Air Contaminant Standards, 29 CFR Part 1910 and 29 CFR Part 1926, as published in the **Federal Register** (40 FR 23847), dated June 3, 1975. These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) and Number Ten (equivalent to 29 CFR Part 1926) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on October 10, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard it has been determined that the State standard is identical to the Federal standard and accordingly is hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws: The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

The decision is effective April 17, 1979.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at New York City, New York this 28th day of February 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-11936 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

Puerto Rico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18 (c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have and adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to a Federal standard change, the State has submitted by letter dated September 6, 1978, from Assistant Secretary John Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, a State standard comparable to the Occupational Safety and Health Administration Permanent Standard for 1.2 Dibromo-3 Chloropropane, 29 CFR 1910.1044, as published in the **Federal Register** (43 FR 11514) dated March 17, 1978. This standard which is contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) was promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on May 11, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Pueto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard it has been determined that the State standard is identical to the Federal standard and accordingly is hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws: The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

The decision is effective April 17, 1979.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at New York City, New York this 28th day of February 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-11938 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

Puerto Rico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18 (c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to a Federal standard change, the State has submitted by letter dated November 30, 1978, from Assistant Secretary John Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, a State standard comparable to the Occupational Safety and Health Administration Permanent Standard for Inorganic Arsenic, 29 CFR 1910.1018, as published in the **Federal Register** (43 FR 19584) dated May 5, 1978. This standard which is contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) was promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 20, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard it has been determined that the State standard is identical to the Federal standard and accordingly is hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following loations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws: The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective April 17, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at New York City, New York this 28th day of February 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-11939 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Adminstrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and the adoption of Subpart E to Part 1952 containing the decision.

The Utah Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearing(s).

3. Commission order adopting the standards and designating an effective date.

4. Providing certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

Section 1952.113 of Subpart E sets forth the State's schedule for adoption of Federal Standards. By letter dated July 28, 1978, from Ronald L. Joseph, Administrator, Utah Occupational Safety and Health Division, to Curtis A. Foster, Regional Administrator, stating that the State of Utah will not incorporate as part of the plan, State standards comparable to 29 CFR 1910. 1046a Occupational Exposure to Cotton Dust in Cotton Gins, which was published in **Federal Register** (43 FR 27418) Friday, June 23, 1978, (43 FR 28474) Friday, June 30, 1978, (43 FR 35035) Tuesday, August 8, 1978, (43 FR 56894) Tuesday, December 5, 1978, and 29 CFR 1910.1043 Occupational Exposure to Cotton Dust published in **Federal Register** (43 FR 27350) Friday, June 23, 1978, (43 FR 28473) Friday, June 30, 1978, (43 FR 35032) Tuesday, August 8,1978. (43 FR 56893) Tuesday, December 5, 1978 and also 29 CFR 1928.113 Occupational Exposure to Cotton Dust in Cotton Gins, Subpart I—Toxic and Hazardous Substance, (43 FR 28474) Friday, June 30, 1978 and (43 FR 35035) Tuesday, August 8, 1978. These standards, are not an issue in the State of Utah and will not be contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, and this decision was made by the Adminstrator of the Utah Occupational Safety and Health Division, Utah Industrial Commission July 28, 1978, pursuant to Title 35-9-6 Utah Code annotated 1953.

2. *Decision.* Having reviewed the State decision, it has been determined that there is no need for the State of Utah to incorporate 29 CFR 1910.1043, 29 CFR 1910.1046a and 29 CFR 1928.113 as part of the plan.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Adminstrator, Room 1554, Federal Office Bulding, 1961 Stout Street, Denver, Colorado, 80294; Utah State Industrial Commission. UOSHA Offices at 448 South 400 East, Salt Lake City, Utah, 84111; and the Technical Data Center, Room N2439R, 3rd Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under § 1953.2(c) of 29 CFR Part 1953, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause at this time, under the present occupational and agricultural circumstances in Utah, to exempt the Utah Occupational Safety and Health Division, Utah's Industrial Commission from the adoption of the Occupational Exposure to Cotton Dust in Cotton Gins Standards.

This decision is effective April 17, 1979.

(Sec. 18, Pub. L. 91-595, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this 27th day of February 1979.

Curtis A. Foster,

Regional Administrator.

[FR Doc. 79-11937 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

Wyoming State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and the adoption of Subpart BB to Part 1952 containing the decision.

The Wyoming Plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.23(a)(2) of 29 CFR provides that whenever a Federal standard is promulgated, the State must adopt or promulgate a standard or standard change which will make the State standard at least as effective as the Federal standard or change within six months of the Federal promulgation or change. In response to Federal standard changes, the State has submitted by letter dated January 30, 1979, from Donald D. Owsley, Health and Safety Administrator, to Curtis A. Foster, Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.20 Preservation of Employee Exposure and Medical Records, which were published in **Federal Register** (43 FR 31019) Wednesday, July 19, 1978 and (43 FR 31330) Friday, July 21, 1978. These standards, which are contained in the Wyoming Occupational Safety and Health Rules and Regulations for General Industry, were promulgated after hearings held on November 3, 1978, and by resolution adopted by the Wyoming Occupational Health and Safety Commission on November 3, 1978, and become effective on January 26, 1979, pursuant to section 27-278 Wyoming Status 1957 as amended 1973.

2. *Decision.* Having reviewed the Sate submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards.

3. *Location of supplements for inspection and copying.* A copy of the letter, along with the approval plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 200 East Eighth Avenue, Cheyenne, Wyoming 82001; and the Technical Data Center, Room N2439R, 3rd and Constitution Ave., NW., Washington, D.C. 20210.

4. *Public participation.* Under § 1953.2(c) of 29 CFR Part 1953, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplemental to the Wyoming State Plan as a proposed change and making the Regional Administrator's Approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law, which included public comments, and further public participation would be unnecessary.

This decision is effective April 17, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this twenty Seventh day of February, 1979.

Curtis A. Foster,

Regional Administrator.

[FR Doc. 79-11940 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

General Motors Corp. and Chrysler Corp.; Application for Variances, Extension of Comment Period

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Extension of time to submit comments on variance requests and to request a hearing.

SUMMARY: This notice extends the time for written comments concerning the variances from arsenic and lead submitted by General Motors and Chrysler Corporations. It also extends the time in which affected employers and employees may request a hearing.

DATES: Comments and hearing request must be submitted by May 7, 1979.

ADDRESS: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, Third Street and Constitution Avenue, N.W., Room N3656, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination at the above address, telephone: (202) 523-7193.

SUPPLEMENTAL INFORMATION: On February 2, 1979, OSHA published a notice announcing the application of General Motors and Chrysler Corporations for variances and grant of interim orders from certain provisions of the standard prescribed in 29 CFR 1910.1025 concerning lead. It also announced the renewal of interim orders previously granted to these Corporations from certain provisions of the standard prescribed in 29 CFR 1910.1018 concerning inorganic arsenic (44 FR 6791). The comment period ended

on April 18, 1979, which was also the last day to request a hearing.

As part of the terms of the interim order, the Corporations were required to submit certain data at 30, 45, and 60 day intervals. The final submissions from the Corporations were received on April 5, 1979.

In order to allow commenters sufficient time to analyze this data, and prepare comments, the comment period has been extended to May 7, 1979.

Data submissions may contain materials that are relevant to the affected employers and employees decision to request a hearing. Therefore, the date for requesting a hearing has been extended to May 7, 1979.

Signed at Washington, D.C. this 13th day of April 1979.

Eula Bingham,
Assistant Secretary of Labor.

[V-78-12; V-79-11]
[FR Doc. 79-12056 Filed 4-16-79; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute for Occupational Safety and Health

Interagency Agreement Regarding Employee Protection

This Interagency Agreement is between the Occupational Safety and Health Administration (OSHA), Department of Labor, and the National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare. Its purpose is to set forth an understanding between OSHA and NIOSH for consultation, coordination, and cooperation in effectively and efficiently carrying out their respective safety and health functions for the protection of employees under the Occupational Safety and Health Act, Pub. L. 91-596 (the Act). OSHA and NIOSH, therefore, agree to the following:

A. Development of Health and Safety Criteria

1. NIOSH and OSHA will jointly establish the priorities for criteria development.

2. NIOSH and OSHA shall develop the parameters to be considered in the development of criteria documents.

B. Development and Revision of Health and Safety Standards

1. At the time a decision is made to begin rulemaking, OSHA will advise NIOSH of the schedule of its rulemaking process for establishing or revising a health and safety standard. Copies of all written comments submitted to OSHA as part of a rulemaking proceeding will be made available to NIOSH.

2. NIOSH will appoint one or more coordinators to serve as liaison for NIOSH technical assistance to OSHA in the preparation and review of draft proposed standards prior to and during the rulemaking process. The coordinator will be available to address technical health and safety issues raised during the rulemaking process.

3. NIOSH will provide expert technical witnesses for OSHA's public rulemaking hearings.

C. Health Hazard Evaluations and Interactions With Compliance

1. NIOSH will respond to Health Hazard Evaluation (HHE) requests under the authority of section 20(a)(6) of the Act. The Assistant Secretary of Labor for Occupational Safety and Health and the Director of NIOSH will designate contact persons to facilitate the dissemination of information regarding HHE's.

2. All requests made by OSHA, or received by OSHA from outside sources, will be forwarded to NIOSH through the OSHA designated representative; in addition, NIOSH will advise OSHA's designated representative of all HHE requests that it receives from all other sources.

3. NIOSH, upon initiating a HHE, will contact OSHA and employer/employee representatives to obtain information relevant to the HHE. If during a HHE, NIOSH encounters a situation that may present a serious occupational safety or health hazard, OSHA shall be notified immediately in order to take appropriate action.

4. OSHA and NIOSH will coordinate their field activities in each facility where a NIOSH HHE has been requested.

5. The monthly Health Evaluation/Technical Assistance (HE/TA) Program Activities Report shall be submitted to OSHA's designated representative. A copy of final HHE reports will be sent to the OSHA designated representative. In such instances when a draft HHE report is submitted by NIOSH to employer/employees for comment, OSHA will receive a copy prior to that submission. Additionally, any interim reports produced for HE/TA requests will be distributed to OSHA's designated representative.

D. Compliance Assistance

1. NIOSH will provide technical assistance and supportive field investigations to OSHA. Requests from OSHA will be in writing; however, in a disaster or emergency situation, oral requests will suffice and will be acted upon immediately by NIOSH. In these cases, OSHA will follow up with a written request. Each request will contain: sufficient information for NIOSH to develop a study protocol; available details and results of the OSHA investigation; the specific nature and extent of assistance requested; the purpose of the assistance; any constraints imposed by pending or contemplated legal actions; and any other information which would aid NIOSH in developing its response to the request.

2. Coordination of requests for technical assistance and supportive field investigations shall ordinarily be made through the Offices of the Assistant Secretary of Labor for Occupational Safety and Health and of the Director of NIOSH. In emergency or disaster situations, coordination may be made through OSHA's Office of Field Coordination and NIOSH's Division of Surveillance, Hazard Evaluation and Field Studies.

3. NIOSH will provide expert witnesses in support of OSHA for court actions, administrative proceedings and other legal actions.

E. Training and Education

1. OSHA and NIOSH will coordinate training and education activities so as to discharge with minimal duplication of effort their respective responsibilities under section 21 of the Act. While each organization will remain primarily responsible for, and in control of, activities in its area of responsibility, joint and cooperative efforts will be encouraged.

2. OSHA is responsible for training Federal and State compliance personnel and for employer/employee education, and NIOSH is concerned with career or technical training. For the purposes of OSHA–NIOSH cooperation in the area of training and education, the term "technical training" is defined as that academic and professional training preparing an individual for practice as a professional or a technician in the field of occupational safety and health, and providing that individual with the knowledge and skills necessary to recognize and evaluate workplace hazards which may lead to occupational

injuries or illnesses and to participate in the development of control measures for these hazards. The term is not intended to include training designed to ensure proficiency in applying occupational safety and health standards in a compliance operation.

F. Technical Information Exchange

1. OSHA and NIOSH will provide each other with data, services, and products from varous information files, subsequent to subagreements.

2. The Assistant Secretary of Labor for Occupational Safety and Health and the Director of NIOSH will designate contract persons to facilitate dissemination of technical information to OSHA and NIOSH personnel.

G. Testing and Certification

1. NIOSH will, as part of its testing activities be responsive to OSHA's needs regarding requirements for safety and health standards.

2. NIOSH, independently and jointly with the Mine Safety and Health Administration (MSHA), tests and certifies respiratory protective equipment, hazard indicators, air sampling instruments, devices for measuring the hazards from physical agents, and personal protective equipment. OSHA agrees to encourge, through its regulations and educational programs, the use of items certified under this program in preference to uncertified items for the same purpose whenever NIOSH or NIOSH/MSHA certified devices are appropriate for an occupation or industry.

H. Meetings

1. Meetings of a working group of OSHA and NIOSH personnel, designated by the Assistant Secretary of Labor for Occupational Safety and Health and the Director of NIOSH, will be held bimonthly, or more frequently as needed, to address issues selected by those two officials.

2. Policy meetings will be convened by the Assistant Secretary of Labor for Occupational Safety and Health and the Director of NIOSH on a Quarterly basis, or more frequently as needed. These meetings will examine aspects of joint policy, cooperation and coordination. The heads of each agency will identify issues for consideration by the working group and will review the results of that group.

I. Subagreements

Subagreements to accomplish the goals set by this agreement will be developed and modified, as deemed necessary, by OSHA and NIOSH. OSHA's Office of Legislative and Interagency Affairs and NIOSH's Office of the Director will coordinate the development of these subagreements, subject to review and approval by the Assistant Secretary of Labor for Occupational Safety and Health and the Director of NIOSH. Such agreements will include specific provisions for detailing the relationship and responsibilities of each organization.

J. Reimbursable Costs

Any actions taken under this agreement requiring an exchange of funds must be made pursuant to specific subagreements. Such subagreements will define the specific tasks involved, the time period for the subagreement to be in force, the reports required to fulfill the subagreement, the project officers for the subagreement, and the reimbursable costs allotted to the task covered by the subagreement.

K. Interagency Coordination

The Office of Legislative and Interagency Affairs in OSHA and the Office of the Director in NIOSH shall serve as liaison to facilitate communication and operations between the participating organizations.

L. Period of Agreement

This Interagency Agreement shall continue in effect unless modified by mutual consent of both parties or terminated by either party upon a thirty (30) day advance written notice to the other.

This agreement will become effective on the date of the last signature and it supersedes the Memorandum of Understanding between OSHA and NIOSH dated October 23, 1973.

Dated: February 14, 1979.

Eula Bingham,

Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor.

Dated: April 5, 1979.

Julius B. Richmond,

Assistant Secretary for Health and Surgeon General, U.S. Department of Health, Education, and Welfare.

[FR Doc. 79-11931 Filed 4-16-79; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Debarment

For violation of Executive Order 11246, as amended, and the implementing regulations, I debarred Loffland Brothers Company, its officers, divisions and subsidiaries, and any and all purchasers, successors, assignees, and/or transferees, from the award of all Federal contracts and subcontracts, including agreements with Federal mineral leaseholders to perform work on Federal leaseholds, subcontracts which in whole or in part are necessary for prime contractors, such as oil companies, to fulfill their fuel requisitions with the Government and from extensions or other modifications of any existing Federal contracts or subcontracts.

A copy of my Decision and copies of the Recommended Decision and Order of the Administrative Law Judge and the Decision of the Department of the Interior, Office of Hearings and Appeals, follow.

Dated: April 4, 1979.

Weldon J. Rougeau,

Director, Office of Federal Contract Compliance Programs.

Decision by the Director of OFCCP

In the matter of Office of Equal Opportunity, Department of the Interior, and Loffland Brothers Company; (Docket No. OEO 75-1).

This matter arises under Executive Order 11246, as amended (30 FR 12319; 32 FR 14303; 43 FR 46501), and has come to me for approval of a final Administrative Order pursuant to 41 CFR 60-1.26(d), 60-1.27 and 60-30.30(b) (1977 ed.) after a hearing on the merits. Except as modified herein, I hereby approve the July 18, 1977, decision of the Office of Hearings and Appeals, United States Department of Interior, which adopted and affirmed the Administrative Law Judge's recommended decision of April 21, 1977, to the extent the decision found Loffland's affirmative action program (AAP) inadequate. The only remaining issue is whether Loffland was a covered contractor or subcontractor under the Executive Order and the implementing regulations.

Loffland Brothers Company is a worldwide drilling company composed of six divisions with headquarters in Tulsa, Oklahoma. The Southern Division, located in New Iberia, Louisiana, is the subject of this proceeding. That Division, at the time relevant to this proceeding, operated oil drilling rigs in parishes throughout southern and off-shore Louisiana.

This proceeding was commenced on June 9, 1975, by the U.S. Department of Interior, the cognizant compliance agency at that time, after Interior and Loffland were unable to reach agreement in conciliation conferences with respect to whether the company's affirmative action program complied with regulations (41 CFR 60-1.40 and Part 60-2 (1974 ed.)) implementing the Executive Order.

A formal hearing was held before Administrative Law Judge Forrest E. Stewart, U.S. Department of Interior, on March 1-7, and April 26-30, 1976. Judge Stewart issued his Recommended Decision on April 21, 1977. At the time Judge Stewart issued his Recommended Decision, Department of Labor regulations required compliance agencies to prepare an Administrative Order

and refer it to the Director of the Office of Federal Contract Compliance Programs (OFCCP) for approval. (See 41 CFR 60–30.30(b) (1977 ed.).) Under Department of Interior regulations the responsibility for preparing such orders was assigned to the Office of Hearings and Appeals (43 CFR 4.792). On July 18, 1977, the Office of Hearings and Appeals issued a Decision and Order and transmitted the case to OFCCP for approval as required by 43 CFR 4.792 and 41 CFR 60–30.30(b). A complete statement of the relevant facts is set forth in Judge Stewart's Recommended Decision. His Recommended Decision, as modified by the Office of Hearings and Appeals on July 18, 1977, is appended to this final Administrative Order.

Judge Stewart found that Loffland Brothers had violated Executive Order 11246, as amended, and the implementing regulations in three respects.

(1) Loffland's affirmative action program dated January 1973 was unacceptable because goals and timetables for increasing minority representation in various job classifications were unacceptable. Contrary to 41 CFR 60–2.10 the AAP did not include specific goals and timetables for correcting underutilization in the upper-level rig job positions, nor did it analyze each of the factors enumerated in 41 CFR 60–2.11 to justify its lack of specific goals, as required by 41 CFR 60–2.12(k).

(2) Loffland's AAP did not include the required specific goals and timetables for women, nor was this matter satisfactorily addressed by the company in the conciliation meeting of April 23, 1974.

(3) Finally, Loffland's AAP did not cover training and promotion programs for possible upgrading of minorities in adequate detail, and did not consider the amount of training required for women to achieve rig positions.

Loffland Brothers contended that it was not a prime contractor or subcontractor within the meaning of the regulations. The regulations effective at the time of the proceeding defined Government contractor as follows (41 CFR 60–1.3(r) (1974 ed.)):[1]

"The term 'prime contractor' means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order."

The same regulations (412 CFR 60–1.3(w)) defined subcontract as:

" * * * any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

"(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, *which, in whole or in part, is necessary to the performance of any one or more contracts*; [Emphasis added.]

"(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed."

Finally, 41 CFR 60–1.3(x) defined subcontractor as:

" * * * any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor."

With respect to Loffland's status as a prime contractor, Judge Stewart stated (recommended decision, pp. 11–12):

"The record shows that Loffland has entered into two substantial prime Government contracts since 1968. The parties stipulated that on January 17, 1968, Loffland Brothers Company entered into a contract with the U.S. Atomic Energy Commission for the drilling of an emplacement hole, U–19F, in the Nevada testing grounds, and that this contract was completed on August 17, 1968. The amount of the contract was $1,316,180.00 (Tr. 117). The statement in Loffland's *Brief and Proposed Findings of Fact and Conclusions of Law* (p. 3) that the contract was finished in February 1971 is rejected. Respondent admits that there is no question that during the time Loffland was under contract to the Atomic Energy Commission, [Contract AT (26–1–358)], Loffland was a Government contractor and subject to the Executive Order (Brief p. 32). Loffland and Fenix & Sisson, Inc., on January 1, 1971, entered into an agreement with the Department of the Interior, Bureau of Mines, contract number HO320177, to drill a 4-foot diameter shaft in West Virginia. The Government contract was completed on December 31, 1971 (Petitioner's Ex. P–27). Respondent also admits that there is no question that during the time Loffland was performing this contract for the Department of the Interior, it was a Government prime contractor and subject to Executive Order 11246 (Brief p. 32). In both of these agreements, Loffland was rendering certain specified services under contract, in consideration for money paid by the Government to Loffland. There is no evidence of any other prime Government contracts by Loffland since that time. Loffland previously had four other prime Government contracts, however, the evidence did not establish the dates and other details of those contracts (Schultz, Tr. 1368). [Underscoring in original.]"

Loffland presumably is contending that because it completed drilling the wells before the hearing was commenced it was not subject to the Executive Order. This argument misperceives the Executive Order and its implementing regulations.

Loffland's 1971 prime contract with the Department of the Interior contained the equal opportunity clause set forth in section 202 of the Executive Order and in 41 CFR 60–1.4. The equal opportunity clause mandates nondiscrimination and affirmative action in employment towards minorities and women and futher requires the contractor to follow the Secretary of Labor's rules, regulations and orders regarding implementation of its nondiscrimination and affirmative action obligations. These regulations include 41 CFR Part 60–2 which requires contractors such as Loffland to develop and implement written AAPs if they hold a Federal contract or subcontract of $50,000 or more and employ 50 or more employees.

There often may be different performance dates and timeframes for a contractor to fulfill its various obligations under a Federal contract or subcontract. The contractual obligation to develop, annually update, and implement an acceptable affirmative action program is just as much a part of the contract as the obligations to deliver widgets, or as in this case, to perform oil well drilling services. Accordingly, where the contractor has promised, as part of its contract, to correct the underutilization of minorities and women, its affirmative action program obligations survive until the contractor's underutilization of minorities and women is corrected. As Loffland's underutilization of minorities and women was not corrected by 1973, it had a continuing obligation to develop and implement a satisfactory AAP for that year, notwithstanding that the non-equal employment aspects of its last Federal prime contract (for drilling a four foot diameter shaft in West Virginia) ended December 31, 1971.

It is not likely that Loffland would argue that it had completed the contract by taking all the actions required by the equal opportunity clause in its contract if it had not completed any drilling. Similarly, Loffland cannot be heard to say that it has completed the contract because it has performed the drilling services promised in the contract but has ignored the equal employment opportunity obligations it equally contracted to perform. Any other construction of the Executive Order would render it a nullity, for a contractor could rush in, deliver the services or goods and never perform the equal employment obligations under its contract. Accordingly, Loffland's obligations under the contract continued until such time as it had performed not only it promises to render certain drilling services, but also its equal employment opportunity obligations.

Consistent with this approach, the regulations, for the purpose of compliance reviews, complaint investigations and enforcement proceedings, specifically define a prime contractor as "any person who has held a contract subject to the order." (41 CFR 60–1.3(r) (1974 ed.).)[2] Loffland therefore was required to meet its equal opportunity obligations even though it had completed its drilling services, and was subject to enforcement proceedings if it refused or failed to perform its obligations under the equal opportunity clause of its contracts.

Loffland Brothers also was subject to the Executive Order based on its status as a subcontractor of Federal contractors. The Department of Interior introduced into evidence contracts between Loffland and oil companies which obligated Loffland to drill hole for these companies on oil and gas leaseholds. A number of these leases covered Federal land and had been awarded to the oil companies by the Federal Government. These companies in turn contracted with Loffland to

[1] Several amendments have been made in the regulations since the time period involved in this proceeding; however, except for changes made in the numbering system, no changes have been made in the definitions of "prime contractor" and "subcontractor."

[2] Although the numbering system has changed, no substantive changes have been made in this provision of the regulations since 1974.

drill oil wells on these leaseholds. Some of the leases involved and for which Loffland had contracts to provide drilling services are listed below.

Oil company	Date of lease	Lease No.	Date of Loffland drilling contract
Exxon Corp.	11/1/69	NU-9721	December 26, 1973.
Gulf Oil Company	2/1/70	U-10758	December 26, 1973.
Texaco, Inc. Petroleum Co.	5/1/74	OCS-G-2608	October 18, 1974.
Mobile Oil	2/1/73	OCS-G-2317	June 8, 1973.
Cities Service Oil Company	8/1/73	OCS-G-2414	May 1, 1975.
Standard Oil Company of Cal./Chevron	6/17/68	014773	July 10, 1974.

[See Judge Stewart's Recommended Decision, pp. 14–15 and 23–24.]

The Administrative Law Judge concluded that Loffland's drilling contracts with these oil companies were not subcontracts covered by the Executive Order because the Department of Interior did not prove that any oil produced from the holes drilled by Loffland was ever sold to the Federal Government. It is unnecessary to determine whether any oil produced from Loffland-drilled holes was ever sold to the Government, however, because, Loffland is covered as a subcontractor on another basis.

Under the regulations implementing Executive Order 11246, a Government contract encompasses transactions in which the Government conveys property interests such as a leasehold. "Government contract" is defined as "any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, *including lease arrangements*" 41 CFR 60–1.3. (Emphasis added.) As the court stated in *Crown Central Petroleum Corp.* v. *Kleppe*, 424 F. Supp. 744, 748 (D. Md., 1976), "no restrictive language is evident betraying an intent to limit the application of the provision of the Executive Order to those circumstances in which the Government is a consumer of goods, services, or real property, rather than a supplier." The court went on to hold that oil companies holding Federal mineral leases are Government contractors for purposes of Executive Order 11246.

The oil and gas leases grant to the oil companies the "exclusive right and privilege to drill for * * * oil and gas deposits * * *" and obligate the companies to pay to the Federal Government certain rentals and royalties. Moreover, the leases between the Government and the oil companies typically provide (under the heading "Obligations of Lessee") as follows:

"The Lessee agrees:

"Wells. (1) To diligently drill and produce such wells as are necessary to protect the Lessor from loss by reason of production on other properties or, in lieu thereof, with the consent of the Supervisor, to pay a sum determined by the Supervisor as adequate to compensate the Lessor for failure to drill and produce any such well. In the event that this lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of this lease.

"(2) After due notice in writing, to diligently drill and produce such other wells as the Secretary may reasonably require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with good operating practice."

It is clear that the oil companies have subcontracted a "portion of * * * [their] obligation under" the leases to Loffland Brothers. That is, that portion of the lease which obligates the oil companies "to diligently drill and produce [oil] wells" has been subcontracted to Loffland Brothers. Loffland's subcontract therefore comes squarely within the second part of the definition of subcontract. (See 41 CFR 60–1.3(w)(2) (1974 ed.).) In addition, for the oil companies to perform their lease agreements with the Federal Government, they were obligated to drill the wells in accordance with Federal requirements. Because they subcontracted the drilling requirement to Loffland Brothers, Loffland's drilling contract also was "necessary * * * to the performance" of the oil companies' leases with the Department of Interior. (See 41 CFR 60–1.3(w)(1) (1974 ed.).) Loffland Brothers' drilling subcontracts therefore are covered under both subparts (1) and (2) of the definition of "subcontract" in 41 CFR 60–1.3(w).

Because Loffland's contracts were at least $50,000 and because Loffland employed at least 50 people, it was a Government subcontractor subject to the written affirmative action requirements of 41 CFR Part 60–2.

In accordance with the powers granted to the Director, Office of Federal Contract Compliance Programs pursuant to 41 CFR 60–1.26(d) 60–1.27 and 60–30.30(b) (1977 ed.), I hereby approve the debarment of Loffland Brothers Company, its officers, divisions and subsidiaries, and any and all purchasers, successors, assignees, and/or transferees, from the award of all Federal contracts and subcontracts, including agreements with Federal mineral leaseholders to perform work on Federal leaseholds, subcontracts which in whole or in part are necessary for prime contractors, such as oil companies, to fulfill their fuel requisitions with the Government, and from extensions or other modifications of any existing Federal contract or subcontract.

The debarment will remain in effect until such time as Loffland has satisfied the Director, Office of Federal Contract Compliance Programs, that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause of Executive Order 11246, as amended.

This debarment shall be effective as of this date.

Signed at Washington, D.C., the 4th day of April 1979.

Weldon J. Rougeau,

Director, OFCCP.

Department of the Interior, Office of Hearings and Appeals

April 21, 1977.

Office of Equal Opportunity (OEO), (Petitioner), v. Loffland Brothers Company, (Respondent), (Docket No. OEO 75–1).

Recommended Decision

Appearances: Henry J. Strand, Office of the Regional Solicitor, Department of the Interior, for Petitioner, OEO; R. Robert Huff, Huff and Huff, Inc., Tulsa, Oklahoma, for Respondent.

Before: Administrative Law Judge Stewart.

Factual and Procedural Background

On June 9, 1975, James T. Clarke, Assistant Secretary of the Interior, issued a Proposed Cancellation, Termination, Debarment; and Notice of Hearing, which stated that the Director of the Office for Equal Opportunity (OEO) of the Department of the Interior, with approval of the appropriate officials of the Department of Labor, proposed to cause the cancellation and termination of existing Government contracts and subcontracts held by Loffland Brothers Company, Tulsa, Oklahoma (respondent), and debarment of respondent from future Government contracts, pursuant to sections 209(a)(5) and (6) [3] of Executive Order 11246, 30 FR 12319, September 28, 1965; 30 FR 12935, October 12, 1965 (E.O. 11246),[4] and pursuant to 41 CFR sections 60–1.26(b), and 60–2.2(c)(1) and (2).

41 CFR 60–1.26(b) provides as follows:

[3] SEC. 209. "(a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

* * * * *

"(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

"(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order."

[4] As amended by the following: E.O. 11375, 32 FR 14303, Oct. 17, 1967; E.O. 11478, 34 FR 12985, Aug. 12, 1969.

"(b) *Formal hearings*—(1) *General procedure.* In accordance with procedures prescribed by the Secretary or other agency head, the Director, or an appropriate official of any agency, with the approval of the Director, may convene formal hearings pursuant to Subpart B of this part for the purpose of determining whether the sanctions set forth in section 209(a) (5) and (6) of the order shall be invoked against any prime contractor or subcontractor. Reasonable notice of a hearing shall be sent by registered mail, return receipt requested, to the last known address of the prime contractor or subcontractor complained against. Such notice shall contain the time, place, and nature of the hearing and a statement of the legal authority pursuant to which the hearing is to be held. Copies of such notice shall be sent to all agencies. Hearings shall be held before a hearing officer designated by or under the direction of the Secretary or other agency head. Each party shall have the right to counsel; a fair opportunity to present evidence and argument and to cross-examine.

* * * * *

"The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

"(2) *Cancellation, termination, and debarment.* No order for cancellation or termination of existing contracts or subcontracts or for debarment from further contracts or subcontracts pursuant to section 209 of the order shall be made without affording the prime contractor or subcontractor an opportunity for a hearing. When cancellation, termination, or debarment is proposed, the following procedure shall be observed:

"(i) *Notice of proposed cancellation or termination.* Whenever the Director or his designee, or an appropriate official of any agency, upon prior notification to the Director, proposes to request the Secretary or other agency head to cancel or terminate, or cause to be canceled or terminated, in whole or in part, a contract or contracts, or to require cancellation or termination of a subcontract or subcontracts, a notice of the proposed action, in writing and signed by the Director or his designee, or an appropriate agency official, shall be sent to the last known address of the prime contractor or subcontractor. A copy of such notice shall be published in the **Federal Register.** The notice shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being requested, and a citation of the provisions of the order and regulations pursuant to which the requested action may be taken.

"(ii) *Notice of proposed ineligibility.* Whenever the Director or his designee, or an appropriate official of any agency upon prior notification to the Director, proposes to request the Secretary or other agency head to declare a prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order, a notice of the proposed action, in writing and signed by the Director or his designee, or appropriate agency official, shall be sent to the last known address of the prime contractor or subcontractor. A copy of such notice shall be published in the **Federal Register.** The notice shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, a citation of the provisions of the order and regulations pursuant to which the requested action may be taken, and a statement that the debarment sanction is being sought.

"(iii) *Answer and hearing request.* The prime contractor or subcontractor shall be afforded at least 14 days from receipt of the notice of proposed cancellation, termination, or ineligibility in which to file an answer to the notice and a request for a hearing with the Director or his designee, or the agency. The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice unless the prime contractor or subcontractor is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. The hearing request shall be included as a separate paragraph of the answer."

On April 30, 1971, respondent submitted to the Office of Equal Opportunity for the U.S. Department of the Interior (OEO), designated as a compliance agency under 41 CFR 60–1.3(d) (Govt. Exh. 43; Tr. 464–465, 1512), an affirmative action program (AAP) concerning its Southern Division (Govt. Exh. 1–A–1–x–6, Tr. 355). On January 3 through 7, 1972, OEO's Contract Compliance Officers Al Holley and Charles Roybal conducted a review of respondent's Equal Opportunity program to determine whether it was in compliance with E.O. 11246 and implementing regulations (Govt. Exh. 1–A–1). This review assembled data in addition to that set out in the AAP filed on April 30, 1971. On October 20, 1972, Compliance Officers Holley and Roybal issued a Contract Compliance Review report, which concluded that respondent's AAP was deficient (Govt. Exh. 1–A–1).

On October 16, 1972, OEO sent to respondent a letter enumerating the deficiencies it found with this AAP for the Southern Division and giving, pursuant to 41 CFR 60–2.2(c), respondent 30 days to show cause why enforcement proceedings under section 209(b) of E.O. 11246 should not be instituted against respondent (Govt. Exh. 1–D–21). No show cause order was issued concerning respondent's Mid-Continent Division (Tr. 399–400). Pursuant to respondent's request, OEO met with Mr. Gene Taylor, respondent's Corporate Personnel Manager, on Novermber 8, 1972 (Govt. Exhs. 1–B–4, 1–D–20; Tr. 1427–1437). OEO believed that respondent had agreed at this meeting to adopt a goal of 20 percent minority utilization and a timetable of 5 years, as well as a break-through goal for women (Tr. 350, 412–413). OEO accordingly stated in a letter dated November 17, 1972, to respondent that respondent had shown cause during this meeting why enforcement proceedings should not be instituted by agreeing to submit a revised AAP which would respond in an acceptable manner to each of the deficiencies stated in the show-cause letter sent on October 16, 1972 (Govt. Exh. 1–D–20, Tr. 351).

On January 26, 1973, respondent filed its revised AAPs for the Southern Division, New Iberia, Louisiana (Govt. Exhs. 1–D–15 and 1–A–2), and for the Mid-Continent Division, Odessa, Texas (Govt. Exh. 1–D–15). On June 6, 1973, Gerald C. Williams, OEO's Western Regional Manager, sent to respondent a letter indicating that OEO had determined that neither program met the requirements of regulations issued under E.O. 11246 and that they were therefore unacceptable (Govt. Exh. 1–D–15). This letter enumerated the deficiencies with these AAPs and requested that respondent submit a statement of position regarding each of these alleged deficiencies, and that respondent submit a revised AAP within 30 days (Govt. Exh. 1–D–15). On July 6, 1973, Mr. Taylor, respondent's personnel manager, sent to OEO a letter stating that respondent felt that it had met the requirements of these regulations and that its goals and timetables were adequate (Govt. Exh. 1–D–14).

On March 15, 1974, OEO sent to Mr. Kenneth Davis, respondent's president at that time, a letter stating the history of compliance review of respondent by OEO, setting out the deficiencies with respondent's AAPs for its Southern and Mid-Continent Divisions which remained outstanding, restating its position that these AAPs did not comply with the requirements of the regulations issued under E.O. 11246, and giving, pursuant to 41 CFR 60–2.2(c), respondent 30 days to show cause why enforcement proceedings under Section 209(b) of E.O. 11246 should not be instituted (Govt. Exh. 1–D–11). Copies of this letter were sent to 29 known prime government contractors which utilized or had utilized respondent's services (Govt. Exh. 1–D–11; Tr. 481, 623, 632). On May 14, 1974, OEO sent letters to these contractors giving a report concerning the status of its dispute with respondent (Govt. Exh. 1–D–5).

On April 11, 1974, OEO and respondent arranged at respondent's request another conciliation meeting concerning its AAPs for its Southern and Mid-Continent Divisions (Govt. Exh. 1–D–8). In a letter dated April 22, 1974, to Mr. Gerald C. Williams, Mr. Robert Huff, respondent's attorney, stated that OEO had prematurely and without authority under the Regulations directed copies of the show-cause letter dated March 15, 1974, to respondent's customers (Govt. Exh. 1–D–8). On April 23, 1974, the conciliation meeting took place as agreed in Denver, Colorado (Govt. Exhs. 1–B–3, 1–D–6). Respondent presented new goals and timetables at this meeting (Govt. Exh. 1–B–2–X–A, Resp. Exh. 75; Tr 485), but was unable to demonstrate to OEO's satisfaction that its AAPs, even with these new goals and timetables, were in compliance with the requirements of E.O. 11246 and regulations adopted thereunder (Govt. Exh. 1–D–6). The meeting adjourned when it became apparent that no agreement was possible (Govt. Exh. 1–D–6; Tr. 1160, 1166, 1175).

On May 7, 1974, respondent, through its attorney Mr. Robert Huff, filed with OEO a

document entitled "Notice and Demand for Hearing," citing Chapter 60, Title 41 CFR (Govt. Exh. 1–D–6). No action on this request was taken by OEO at this time due to the prerequisites set forth in 41 CFR 60–2.2(c) which provides:

"Immediately upon finding that * * * his [a contractor's] program [AAP] is not acceptable the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

"(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60–1.26(b) of this chapter, giving the contractor 14 days to request a hearing. If a request for hearing has not been received within 14 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated by default."

On August 2, 1974, Mr. Gerald C. Williams, Western Regional Manager of OEO, sent a memorandum to Mr. Jack Bluestein, Assistant Director of OEO's Contract Compliance Division (Govt. Exh. 1–C–8). In this letter, OEO summarized respondent's equal employment status and requested that OFCC issue to respondent, pursuant to 41 CFR 60–1.26 and 60–2.2, a notice of proposed cancellation or termination of existing contracts or subcontracts and of proposed debarment from future contracts and subcontracts (Govt. Exh. 1–C–8). This letter stated the history of this dispute as OEO saw it and summarized the alleged failure of respondent to comply with E.O. 11246 and rules and regulations adopted thereunder (Govt. Exh. 1–C–8). On November 12, 1974, Mr. Phillip J. Davis, Director of OFCC, sent a letter to Mr. Edward W. Shelton, Director of OEO, stating that after careful consideration of the case, he had approved OEO's request for OFCC's approval of the issuance pursuant to 41 CFR 60–1.26(b) and 60–2.2(c)(1) of a 14-day notice of intent to debar respondent (Govt. Exh. 1–C–5; Tr. 208).

On February 24, 1975, Mr. Shelton, Director of OEO, sent a letter to Mr. Kenneth Davis, respondent's president, summarizing OEO's positions on the matters in issue in this case. OEO stated in this letter its belief that respondent had not committed itself to apply every good faith effort to comply with E.O. 11246. This letter stated that it constituted a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to 41 CFR 60–1.26(b), and that respondent had 14 days from its receipt of this letter to request a hearing (Govt. Exh. 1–D–4). On March 10, 1975, Mr. Davis filed with OEO a letter dated March 4, 1975, addressed to Mr. Shelton, requesting a hearing in this matter in response to OEO's letter dated February 24, 1975 (Govt. Exh. 1–D–3).

On March 17, 1975, the parties were notified that Administrative Law Judge George H. Painter had been assigned by the Chief Administrative Law Judge of the Hearings Division of the U.S. Department of the Interior to preside over the hearing in this matter.

On June 12, 1975, a notice entitled "Proposed Cancellation, Termination, Debarment; and Notice of Hearing" was published in the **Federal Register**, stating:

"Notice is given that the Director of the Office for Equal Opportunity of the Department of the Interior, with approval of the appropriate officials of the Department of Labor, proposes to cause the cancellation and termination of existing Government contracts and subcontracts held by Loffland Brothers Company, Tulsa, Okla., and debarment of the company from future Government contracts and subcontracts pursuant to sections 209 (a)(5) and (a)(6) of Executive Order 11246, as amended, and implementing regulations; 41 CFR 60–1.26(b), and 41 CFR 60–2.2(c) (1) and (2). The Department is proposing these sanctions for noncompliance of Loffland Brothers Company with the nondiscrimination clause required in Government contracts by Executive Order 11246 and implementing regulations, and for noncompliance with regulations implementing Executive Order 11246, pursuant to 41 CFR 60–2.2(a), during that time when the company was a Government subcontractor within the meaning and definition of 41 CFR 60–1.3(x). The Department of the Interior alleges that Loffland Brothers Company does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that:

"1. Goals and timetables for increasing minority representation in various job classifications are unacceptable, under the requirements of 41 CFR 2.10 and 2.12 (a), (c), (d), and (g).

"2. The Affirmative Action Plan does not include specific goals and timetables for women. (41 CFR 60–2.12 (g) and (h)).

"3. Training and promotion programs for possible upgrading of minorities were not covered in the Affirmative Action Plan (41 CFR 60–2.11(b) (1) and (2)).

"4. The company is using educational standards in certain advancement programs which are causing an adverse effect upon the entrance and advancement of minorities. (41 CFR 60–3.13; 41 CFR 60–2.23(a)(3); 41 CFR 60–224(b); 41 CFR 60–3.3; 41 CFR 60–3.2).

"5. The pre-employment screening process is having an adverse effect on minorities and women. (41 CFR 60–3.13; 41 CFR 60–2.24(d)).

"6. Applicant statistics which meet the requirements of the regulations are not being maintained. (41 CFR 2.12(1)).''

This notice also provided that there would be a hearing on this matter in September 1975 in New Orleans, Louisiana, and explained rights of other persons or organizations to participate in this hearing (40 FR 25036). Copies of this notice were sent to respondent on June 10, 1975, and to the directors of various federal agencies on June 23, 1975. On June 25, 1975, respondent filed an Answer to this notice incorporating by reference its request for hearing dated February 24, 1975, and its Notice and Demand for Hearing filed with OEO on May 7, 1974.

On July 2, 1975, a pre-hearing conference was held before Judge Painter in the Federal District Courthouse, Tulsa, Oklahoma. Both parties were represented by counsel at this conference. Pursuant to this conference, Judge Painter issued on July 25, 1975, a Pre-hearing Order directing the parties to exchange witness lists and exhibits before the end of August 1975. On August 25, 1975, Judge Painter granted a joint motion by the parties and continued the hearing in this matter indefinitely in order to allow them to complete discovery.

On September 10, 1975, Administrative Law Judge Charles C. Moore, Jr., sent a notice to the parties informing them that the hearing in this matter had been assigned to him because Judge Painter had transferred to another agency. In this notice and in a supplemental notice issued on October 6, 1975, Judge Moore informed the parties that he owned stock in two oil companies and requested that the parties inform him whether respondent was in fact a subcontractor to either of these two oil companies. On October 23, 1975, OEO filed a response to these requests alleging that respondent was currently a drilling subcontractor with both these companies. On October 31, 1975, Judge Moore issued an order disqualifying himself from hearing this dispute in order to avoid any potential appearance of conflict of interest.

On November 25, 1975, Administrative Law Judge Stewart having been assigned to this matter, reset it for hearing in December 1975 in New Orleans, Louisiana. On December 12, 1975, on joint motion of the parties, the hearing was postponed due to the unavailability of one of OEO's witnesses, and on January 21, 1976, the matter was reset for hearing on March 1, 1976, in Denver, Colorado, and on March 4, 1976, in Tulsa, Oklahoma. The change in hearing site was granted at the request of the parties.

A hearing was held in the U.S. Courthouse, Denver, Colorado, on March 1 through 3, 1976, and then reconvened in the U.S. Courthouse, Tulsa, Oklahoma, on March 4 through 7, 1976. The hearing in this matter was adjourned on March 7, 1976, and was on March 29, 1976, set to reconvene on April 26, 1976, in the U.S. Courthouse, Tulsa, Oklahoma. The hearing resumed in Tulsa, Oklahoma, as scheduled and was completed on April 30, 1976. OEO introduced 41 exhibits

and the testimony of four witnesses. Respondent introduced 104 exhibits and the testimony of 10 witnesses. Posthearing briefs were filed by OEO and respondent on July 19 1976. Reply briefs were filed by OEO and respondent on August 23, 1976. On September 7, 1976, OEO filed a response to respondent's reply brief. On September 13, 1976, respondent filed a motion requesting that this response by OEO be stricken from the record on the grounds that it was filed untimely by OEO without permission or authority and that it was contrary to the regulations governing this proceeding. On October 8, 1976, respondent's motion was granted and the response was returned to OEO. On September 17, 1976, OEO filed as request for leave to file a further brief. This request was granted on October 8, 1976, and supplemental briefs were filed by OEO on October 29, 1976, and by respondent on November 1, 1976.

Despite the inclusion of the AAP for respondent's Mid-Continent Division in the show cause order dated March 15, 1974, which led to this hearing, OEO elected not to attempt to prove the allegations therein that this AAP was unacceptable. At the hearing in this matter, Mr. Henry J. Strand, OEO's attorney, stated that OEO had elected to proceed only against the Southern Division as far as presenting evidence (Tr. 426). In its closing brief, OEO states in reference to the nature of the issues in this dispute only "that Respondent has failed to submit an Affirmative Action Plan (AAP) for its Southern Division having goals and timetables that are acceptable to Petitioner OEO" (OEO's Closing Brief at pages 1–2). Whether respondent's AAP for its Mid-Continent Division was acceptable or whether its employment practies there were discriminatory are thus not issues in this proceeding, and evidence only relevant to the Mid-Continent Division has not been considered. The parties stipulated that the dispute concerning a complaint of discrimination referred to in the Administrative File (Govt. Exh. 1–D–14, p. 4) had been settled (Tr. 438), and accordingly since it is not at issue here it has not been considered.

Section 201 of E.O. 11246 directs that the Secretary of Labor adopt such rules and regulations as deemed necessary and appropriate to achieve the purposes of this Order. Rules and Regulations concerning E.O. 11246 were adopted by the Secretary of Labor and appear in 41 CFR Chapter 1 and Chapter 60. Part 4 of Title 43 CFR sets out Hearings and Appeals procedures for matters within the jurisdiction of the Department of the Interior. Subpart H of Part 4, 43 CFR 4.750 *et seq.*, is entitled "Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations and Order Issued Thereunder." 43 CFR 4.779(a), included in Subpart H, provides that "* * * [a] hearing will be held in order to determine whether respondent has failed to comply with one or more applicable requirements of Executive Order 11246, and rules, regulations, and orders thereunder."

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent challenges the jurisdiction of the Department of the Interior to take action against Respondent to terminate its Government contracts and to debar it from further Government contracts and subcontracts (D–6 of Ex. P–1, Respondent's Notice and Demand for Hearing). Respondent's basis for challenging jurisdiction is that in its opinion, the company is not a Government contractor or subcontractor within the meaning of the regulations, 41 CFR 60–1 and 2. (Huff, Tr. 19 and 20; Schultz, Tr. 898; Petitioner's Closing Brief p. 19).

Petitioner contends that there are overlapping ways that Loffland, as a drilling contractor, is subject to Federal OEO regulations as a Government contractor or subcontractor; 1) as a "continuing" Government contractor, 2) as a subcontractor performing services for oil companies supplying oil products to the Government, and 3) as a subcontractor to oil companies drilling on Federal leases (Brief p. 19).

Loffland as a Prime Government Contractor

The record shows that Loffland has entered into two substantial prime Government contracts since 1968. The parties stipulated that on January 17, 1968, Loffland Brothers Company entered into a contract with the U.S. Atomic Energy Commission for the drilling of an emplacement hole, U–19F, in the Nevada testing grounds, and that this contract was completed on August 17, 1968. The amount of the contract was $1,316,180.00 (Tr. 117). The statement in Loffland's *Brief and Proposed Findings of Fact and Conclusions of Law* (p. 3) that the contract was finished in February 1971 is rejected. Respondent admits that there is no question that during the time Loffland was under contract to the Atomic Energy Commission, [Contract AT (26–1–358)], Loffland was a Government contractor and subject to the Executive Order (Brief p. 32). Loffland and Fenix & Sisson, Inc., on January 1, 1971, entered into an agreement with the Department of the Interior, Bureau of Mines, contract number HO320177, to drill a 4-foot diameter shaft in West Virginia. The Government contract was completed on December 31, 1971 (Petitioner's Ex. P–27). Respondent also admits that there is no question that during the time Loffland was performing this contract for the Department of the Interior, it was a Government prime contractor and subject to Executive Order 11249 (Brief p. 32). In both of these agreements, Loffland was rendering certain specified services under contract, in consideration for money paid by the Government to Loffland. There is no evidence of any other prime Government contracts by Loffland since that time. Loffland previously had four other prime Government contracts, however the evidence did not establish the dates and other details of those contracts (Schultz, Tr. 1368).

The petitioner contends that any company which has ever held a prime Government contract in the past is also "made subject to the regulations" by the following provisions of 41 CFR of 60–1.3:

"(r) The term 'prime contractor' means any person holding a contract and, for the purposes of Subpart B of this part, any person who *has held* a contract subject to the order. (Emphasis added.) [Brief p. 13.]"

The validity of this regulation is not attacked by the respondent, only its interpretation. Respondent, in its Brief, states:

"At the outset, it should be understood that LOFFLAND is not challenging the authority of the President to issue Executive Order 11246, as amended or the delegated authority to the Department of Labor to issue the various Regulations thereunder, or the Regulations promulgated. Rather, LOFFLAND is challenging the claimed jurisdiction by OEO-INTERIOR over LOFFLAND under the Executive Order 11246, and the Regulations thereunder, because LOFFLAND and its business activities are not within the language and intent of the Regulations or the Executive Order. To try to bring LOFFLAND within same would be beyond the power of the President, the Department of Labor, or the Department of Interior, and such would violate the Constitution and the constitutional rights of LOFFLAND. (Brief p. 26.)"

Even in its argument on the specific issue of jurisdiction respondent states: "The language of the Executive Order and the Regulations is valid when properly interpreted * * *" (Brief p. 23). The interpretation that respondent asks 41 CFR 60–1.3(r) be given is stated on page 25 of its Brief: "The concept that once a company becomes a Government contractor, it remains so after the Government contract has been completed, or the concept that a series of Government contracts gives continuing agency jurisdiction over the contractor after the completion of such contracts is contrary to the Executive Order and Regulations." Respondent's interpretation is in direct opposition to the plain language of the regulation. There is no rule of construction which would support Respondent's interpretation. The regulation is clear and unambiguous and under its provisions Loffland is a prime Government Contractor and subject to the jurisdiction of the Government in this proceeding.

The record shows, however, that it is not the policy of the Department of Labor to consider that once a contractor has been a Government prime contractor and has finished his job he thereafter remains a Government contractor forever (Bierman Tr. 268).

Petitioner's witness, Mr. Leonard J. Bierman, Associate Director of the Office of Federal Contract Compliance Programs of the Employment Standards Administration, U.S. Department of Labor, addressed the concept with this explanation:

"[T]here is a concern about the contractor that comes in and out of Government work, and we consider those kinds of contractors continuing Government contractors. There may be gaps in their contractual responsibility, but the contractor is considered to be a continuing contractor, and we treat them as such. For a one-time

contract, never again to be renewed, ten years later we would not expect that contractor to have affirmative action obligation because of contracts held before. [Tr. 268.]"

Indeed, Mr. Bierman indicated, this time period could be substantially shorter, 1 month, if it was "clear that this was a one-time contract, and it was not a continuing kind of contractor, in again and off again * * *" (Tr. 268).

The Petitioner's position is that:

"* * * [U]nder the regulation once a company "has held" a Government contract, it is assumed to be covered by the regulations from that time forward because of the possibility or likelihood that it may enter into further such contracts in the future. However, as explained above, the company is not bound "forever" if it is not *in fact* a Government contractor or subcontractor and nevermore intends to be * * *. [Brief p. 20.]"

Respondent argues that there is no showing in the evidence that Loffland will ever have another contract with the Government. In regard to its two prime Government contracts in 1968 and 1971 respondent states:

"Both of these are special circumstances, requiring specialized equipment. The type and kind of holes drilled are not required by the private sector, and are entirely different from the type and kind of holes drilled for the oil and gas industry."

There is nothing in this statement to indicate that Loffland is no longer a prime Government contractor and no satisfactory rationale for a finding to that effect has been offered. The present ownership or availability of the type of specialized equipment and the possibility of its use in the future has not been shown. In his opening statement counsel for Respondent stated: "* * * We have been Government contractors, we admit that, but, we are no longer (a Government contractor) and after all this, we will probably not intend to be in the future" (Huff Tr. 20). The evidence shows, and it has not been disputed that Loffland has been a Government contractor. There is no evidence to support either a finding that Loffland has since that time ceased to be a Government Contractor or a finding that Loffland does not intend to be a Government Contractor in the future. Loffland has entered into several direct prime Government contracts and at least two of them were of considerable dollar amount. We agree with Petitioner's statement that "* * * we cannot accept the speculative assertion that Loffland *probably* will not intend to be one in the future. The facts of the past and the well demonstrated vagaries of the drilling business do not support such a categorical prediction (Brief, p. 20)."

Drilling on Federal Land or Leases

Petitioner also contends that "Loffland is a Government subcontractor to major oil companies when it drills on Federal land or leases" (Petitioner's Brief p. 25). Loffland regularly drills for major oil companies (Shultz, Tr. 1184) and some of this work is done on Federal leases called outer continental shelf (OCS) leases (Schultz, Tr. 1271). These Federal leases are described in column 2 of Ex. P–4 by name, number, date and applicable Loffland drilling contract. The background contract documents, leases, and their covering letters are in evidence (Exh. P–5–14). Following is a summary of some of the Federal leases between oil companies and the Government on which Loffland has had drilling contracts (Exs. 5–8, 10–11, 24).

Oil company	Date of lease	Lease No.	Date of Loffland drilling contract
Texaco, Inc. (Ex. P–5)	May 1, 1974	OCS–G–2608	October 18, 1974.
Exxon Corp. (Ex. P–6)	November 1, 1969	NM–9721	December 26, 1973.
Phillips Petroleum Company (Ex. P–7)	February 1, 1973	OCS–G–2219	September 20, 1974.
Cities Service Oil Company (Ex. P–8)	August 1, 1973	OCS–G–2414	May 1, 1975.
Standard Oil Company of California/Chevron (Ex. P–10)	June 17, 1968	0144773	June 10, 1974.
Gulf Oil Company (Ex. P–11)	May 1, 1960	OCS–G–0788	June 18, 1965.
	February 1, 1970	U–10758	December 26, 1973.
Mobil Oil Corporation (Ex. P–24)	February 1, 1973	OCS–G–2317	June 8, 1973.

There was no objection to the exhibits upon which the above summary was based when they were offered in evidence (Tr. 110) and those exhibits have not been specifically attacked by Respondent. However, Respondent in contending that some of the other exhibits upon which parts of Exhibit P–4 were based did not involve Federal leases stated:

"Under the general heading of 'Prime Contractors U.S. Government Leases' for Union Oil of California, the supporting Exhibit P–9 showns a Unit Agreement by Pure Oil Company and no showing of any Federal lease being involved. As to Shell Oil, no Government lease is shown, and the supporting Exhibit P–12 is simply a general contract and not related to Federal lands. As to Continental Oil under the same heading of 'U.S. Government Leases', the OEO-INTERIOR has included a State of Louisiana lease [Ex. P–13]. Under ARCO, they included a private lease in Garfield County, Colorado, and a drilling agreement with respect thereto, see Petitioner's Ex. P–14. (Brief, p. 52.)"

These companies were not included in Table I above because the evidence did not establish that some of the Loffland drilling contracts listed in Ex. P–4, involved Federal land or leases and it was unnecessary to resolve the issues raised by respondent as to the other contracts in Ex. P–4 since the evidence summarized in the table adequately establishes that Loffland had drilling contracts on Federal leases.

The unit agreement in Exhibit P–9 is a voluminous document involving several oil companies, the United States, and the State of Wyoming. Although the covering letter form Union Oil Company refers to Federal leases and drilling contracts this agreement was not included in the summary due to difficulty in relating the specific Loffland drilling contract to specific Federal land included in the lease.

Shell Oil company was not included in the summary since there was no supporting document to indicate that a Federal lease was inyolved. The covering letter of Exhibit P–12, a general drilling contract not related to Federal lands, contains a statement: "It is my understanding that we have no contracts with Loffland Brothers involving Federal acreage either on-shore or off-shore."

As to Continental Oil Company, the original 1947 lease in Exhibit P–13 was a State lease of Tract 1583 (Block 48) Gulf of Mexico, State of Louisiana. The 1973 Loffland drilling contract involved Block 48—Grand Isle, OCS lease 0134. Although the covering letter from Continental Oil Company Stated that "This particular well is located in Federal acreage" this company was not included in the summary since there were no citations of legal authorities or factual information to indicate why a lease referred to as a State lease in 1947 was referred to as an OCS lease in 1973.

As to ARCO, Exhibit P–14 contains a Loffland drilling contract involving South Pass Block 60 on OCS lease G–1608 and a Federal lease involving Blocks 59 and 60 South Pass Area. Exhibit P–14 also contains pages concerning a Loffland drilling contract and a lease in Garfield County, Colorado. Although the inclusion of the pages concerning Garfield County, Colorado, may have been inadvertent, ARCO was omitted from the summary due to the unexplained issues raised.

Respondent contends that: "* * * in this case, the Executive Order cannot be interpreted, nor can the Regulations be interpreted, as covering the Federal mineral lands under the jurisdiction of the Secretary of the Interior, and that this means the Federal onshore and offshore oil and gas leases cannot be within the jurisdiction of the OEO-INTERIOR under the Executive Order

and the Regulations because those leases have been specifically excluded from the application of Title 40 by Congress" (Brief, p. 31).

Jurisdiction Under Statutes and Constitution

Title 40, U.S.C.A., Sec. 472, Definitions under the Act, provides in part as follows:

"(d) The term "property" means any interest in property *except* (1) the public domain; * * * minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines as suitable for disposition under the public land mining and mineral leasing laws; * * *. [Emphasis supplied.]"

Title 40, U.S.C.A., Sec. 486(a) provides:

"(a) The President may prescribe such policies and directives, *not inconsistent with the provisions of this Act*, which policies and directives shall govern the administrator and Executive agencies in carrying out their respective functions hereunder. [Emphasis supplied.]"

In asserting that jurisdiction cannot be based on Federal oil and gas leases respondent states:

"There are two acts of Congress which gave the President the power to issue Executive Order 11246, as amended. These statutes, and no other, are Title 40 of the U.S. Code, dealing with the management of Government property; and Title 41 of the U.S. Code, dealing with contracts for the procurement of supplies and services *to the Government*. (Brief, p. 29.)"

In support of its argument respondent cites and quotes extensively from *Contractors Association of Eastern Pa.* v. *Secretary of Labor*, 442 F.2d 159, *cert. den.*, 404 U.S. 854 and *U.S.* v. *Mississippi Power and Light Co.*, 9 EPD par. 10,164. These cases and the authorities cited therein establish that the Executive Order is authorized by the broad grant of procurement authority with respect to Titles 40 and 41.

The issue of jurisdiction under Executive Order 11249 has been considered in a recent case, rendered while this proceeding was pending, by the United States District Court for the District of Maryland in *Crown Central Petroleum* v. *Thomas S. Kleppe, et al.*, 424 F. Supp. 744 (No. M-76-1170, Nov. 24, 1976). The court in this case stated that:

"* * * [i]t appears to the court that the plaintiff is too niggardly in reciting the basis in law for Executive Order 11246. The Order itself states that it is issued "[u]nder and by virtue of the authority vested in [the] President of the United States by the *Constitution and Statutes* of the United States" (Emphasis supplied).

"Article II, § 1 of the Constitution provides that "executive Power shall be vested in" the President. Such power gives the President the right, in the absence of and express Congressional declaration to the contrary, to control the terms upon which public lands or property may be sold, leased, or used by private individuals or entities. *United States* v. *Midwest Oil Co.*, 236 U.S. 459 (1915). Assuming, without deciding, that neither Title 40 nor Title 41 purports to give the President the authority with reference to the oil leases here in question to promulgate Executive Order 11246, this court believes that the Constitution itself gives ample authority to the President to do so."

Therefore, Executive Order 11246 and the regulations thereunder were promulgated under authority of the Constitution of the United States as well as Title 40 and Title 41 of the United States Code and the drilling contracts on oil and gas leases involved in this case have not been placed beyond the jurisdiction of this proceeding by the exclusionary language in the definition of property in 40 U.S.C.A. § 472.

Jurisdiction Under Regulations

Respondent also contends that Executive Order 11246 is not applicable to the oil and gas leases in this case because of the definition of "Government Contract" in the Regulations issued by the Secretary of Labor. Respondent's argument is that contracts for the sale of real and personal property *by* the Government are not Government contracts because they are excluded from the definition of the term "Government contract" in 41 CFR 1-12.802(m). Respondent's position is that this definition is controlling although contracts for the sale of real and personal property *by* the Government are not excluded in the definition of the term "Government contract" in 41 CFR 60-1.3(m).

The definition of the term "Government contract" in 41 CFR 1-12.802(m), from the **Federal Register**, Vol. 33, No. 146-Saturday, July 27, 1968, page 10716 provides:

"(m) "Government contract" means an agreement, or modification thereof, between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this paragraph (m) includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depositary. The term "Government contract" does *not* include (1) agreement in which the parties stand in the relationship of employer and employee, (2) federally assisted construction contracts, and (3) *contracts for the sale of real and personal property by the Government*. [Emphasis added.]"

The definition of "Government contract" in 41 CFR 60-1.3(m), from the **Federal Register**, Vol. 33, No. 104, Tuesday, May 28, 1968, pages 7804, 7805 is in terms similar to the later definition in 41 CFR 1-12.802(m) except for the omission of the phrase "and (3) contracts for the sale of real and personal property by the Government."

In *Crown Petroleum, supra*, the Court in relying on the definitions of "Government contract" under the Office of Federal Contract Compliance Rules, 41 CFR § 60-1 (1975) stated:

* * * [t]he OFCC, as delegate for the Secretary has defined "government contract" as follows:

"*any* agreement or modification thereof between *any* contracting agency and *any* person for the furnishing of supplies or personal property including lease arrangements. 41 CFR 60-1.3(m) [Emphasis supplied.] Here again, no restrictive language is evident betraying an intent to limit the application of the provision of the Executive Order to those circumstances in which the Government is a consumer of goods, services, or real property rather than a supplier."

Although the Court did not specifically deal with the applicability or effect of the restrictive language in the definition of the term "Government contract" in 41 CFR 1-12.802(m), it found in broad terms that Executive Order 11246 was not limited to those circumstances in which the Government is a consumer of goods, services, or real property rather than a supplier.

Although the record of this proceeding does not disclose the reason for two differing and conflicting definitions of the term "Government Contract" in the Code of Federal Regulations the **Federal Registers** from which the definitions were derived give some insight into the development of the regulations. According to the preamble of **Federal Register**, Vol. 33, No. 104—Tuesday, May 28, 1968, Chapter 60 of Title 41 of the Code of Federal Regulations was originally issued by the President's Committee on Equal Employment Opportunity for the purpose of implementing Executive Order 10925 (3 CFR 1959-63 Comp., p. 448) which provided for the promotion and insurance of equal employment opportunity on Government contracts for all persons without regard to race, creed, color, or national origin. Subsequently, the Committee revised this part in order to implement, in addition, Executive Order 11114 (3 CFR, 1959-63 Comp., p. 774) which provided certain amendments to Executive Order 10925 and extended its requirements to certain contracts for construction financed with assistance from the Federal Government. Parts II and III of Executive Order 11246 (30 FR 12319, Sept. 23, 1965) vested in the Secretary of Labor the functions related to Government contracts and Federally assisted construction contracts previously exercised by the President's Committee on Equal Employment Opportunity. Section 201 of Executive Order 11246 provides that the Secretary of Labor shall adopt rules, regulations, and orders as he deems necessary and appropriate to achieve the purposes of the order. Temporary regulations were adopted effective October 24, 1965 (30 FR 13441), continuing in effect the previous regulations of the President's Committee on Equal Employment Opportunity, and orders were issued effective June 1, 1966 (31 FR 6881), and May 9, 1967 (32 FR 7439).

The definition of the term "Government contract" in 41 CFR 1-12.802(m), which excludes "contracts for the sale of real and personal property by the Government, is from the **Federal Register**, Vol. 33, No. 146, Saturday, July 27, 1968, page 10716 which has a preamble stating:

"This amendment of the Federal Procurement Regulations revises Subpart 1-12.8, Equal Opportunity in Employment, in its entirety. The amendment *reflects the Secretary of Labor's May 21, 1968, revision of 41 CFR Part 60-1 (33 FR 7804, May 28, 1968)* pertaining to the obligations of contractors and subcontractors regarding equal opportunity in employment. [Emphasis supplied.]"

Jurisdiction Under Executive Order

Respondent contends that the relationship between the oil companies and the Government is not that of a Government contractor, but that of lessor-lessee. The financial benefit (cash flow) is toward the Government, rather than from the Government to the contractor. Since this flow is reversed, respondent argues that Executive Order 11246 is not applicable.

In addressing the effect of Executive Order 11246 and the two differing definitions of the term "Government contract" in the Regulations, respondent stated:

"The reason these two sections are different is obvious when the purpose of each set of Regulations is analyzed. The former instructs the Government agencies that that flowing *from* the Government is not to be included within the Executive Order coverage. This includes all sales of real or personal property, and LOFFLAND submits, includes the granting of Federal oil and gas leases, for the reasons stated above. The whole Executive Order subject, as pointed out before, covers contracts for the supply of goods and services *to* the Government. As Judge Zirpoli stated in *Legal Aid Society of Alemeda County vs. Schultz*, 349 Fed. Sup. 771, the Executive Order 11246 '* * * mandates that the Federal Government's economic power *as a consumer* be affirmatively used to prevent racial discrimination in employment.' (Resp. Supplemental Brief, pgs. 8–9.)"

The case cited by Respondent is an action brought pursuant to the Freedom of Information Act to require the Department of Treasury to make available various records relating to the Department's Enforcement of E.O. 11246. Although the case stated that the federal government's economic power as a consumer should be affirmatively used to prevent racial discrimination in employment, there was no issue as to whether an oil and gas lease on federal lands, or any similar contract by the Government, constitutes a government contract for purposes of E.O. 11246.

In *Crown Petroleum, supra*, the U.S. District Court in construing the meaning of "Goverment Contractor" under Executive Order 11246 and OFCC Regulations, stated that:

"The Executive Order does not itself define "Government contract." It does, however, purport to be broad in the sweep of its application. Section 202 of Executive Order 11246 provides that with the exception of certain types of contracts defined in Section 204 which are not here relevant, '* * * *all* Government contracting agencies shall include in *every* Government contract * * *' requirements that the contractor not discriminate in employment '* * * because of race, color, religion, sex, or national origin." (Emphasis supplied.) Section 203 provides that "*each* contractor having a contract containing the provisions prescribed in Section 202 shall file * * *" the reports here at issue. (Emphasis supplied.) The literal language of the Executive Order does not betray any presidential intent that the order should be parsimoniously interpreted."

The Court stated that the national policy to eliminate racial and other discrimination in employment is of paramount priority.

Loffland as a Government Subcontractor

Petitioner's position is that "Agency Jurisdiction is not in issue because Agency Action is effective only if and to the extent a company is a government contractor or subcontractor" (Petitioner's Closing Brief, p. 11). In asserting this position, Petitioner states: "In short, we cannot conceive of a situation where the United States Government, through its designated compliance agency (Department of the Interior), does not have the authority (jurisdiction) to decide whether to terminate any oil and gas *Government contracts or subcontracts* which may exist" (Petitioner's Closing Brief, p. 11, 12). A basis for this assertion was a statement in Appendix A of its brief which consisted of excerpts from a 1969 publication co-sponsored and published by the National Association of Manufacturers (NAM) and Plans for Progress entitled "Equal Employment Opportunity: Compliance and Affirmative Action," edited by Thompson Powers, Steptoe and Johnson, Washington, D.C. As the petitioner states, this publication was put together and published by the NAM to help its members understand the requirements of E.O. 11246, and the other Federal laws and regulations pertaining to equal employment opportunity. The excerpts from this publication, which were filed as part of Petitioner's brief but not offered as evidentiary matter or admitted as an exhibit, contain the statement that:

"The government now considers that almost every manufacturing facility in the United States is subject to the Executive Order on equal employment opportunity. Those companies which do not have government contracts themselves are considered covered [as sub-contractors] *if they provide supplies or services which are necessary to the performance of government contracts by others.* * * * [Appendix A at p. 17.) [Emphasis added.]"

The petitioner argues that this interpretation, while understandably limiting its consideration to "manufacturing facilities" as opposed to all "companies" furnishing supplies or services, is nevertheless a logical manifestation and interpretation of the breadth and scope of the Federal EEO laws.

Early in the hearing, to insure that the parties presented evidence to support adequate findings of fact, the Administrative Law Judge indicated that a prima facie showing of jurisdiction by the petitioner would be required (Tr. 15). Loffland had drilling contracts with major oil companies which had contracts to supply their products to the Government. Some of these contracts between Loffland and the oil companies and between the oil companies and the Government are listed in the summary in Table II below. The letters DSA indicate Defense Supply Agency Contracts.

Table II

Government Prime Contractor	Prime Contracts During Loffland Drilling Contract	Date of Loffland Drilling Contract	Prime Contracts Subsequent to Loffland Drilling Contracts
Exxon Corporation	DSA 600-75-D-0545 4/4/74-3/31/75 DSA 600-75-0416 8/13/74-6/30/75 (Ex. R-15, 20).	12/26/73 (Ex. P-6)	DSA 600-75-D-0522 1/30/75-6/30/75 TVA No. 75 P-70-10233 4/18/75-12/31/75 (Ex. R-28, 29).
Phillips Petroleum Corporation	DSA 600-75-D-0547 1/30/75-6/30/75 (Ex. R-32).	9/20/74 (Ex. P-7)	Energy Research and Development Administration E(49-18) 1207 11/1/74-12/31/77 (Ex. R-26).
Cities Service Company	DSA 600-75-D-0513 12/27/75-6/30/76 (Ex. R-21).	5/1/75, 5/1/75 (Ex. P-8)	DSA 600-75-D-0340 7/12/74-12/31/74 Bureau of Mines E(34-1)-003 6/17/74-10/1/78 (Ex. R-35, 36).
Union Oil Company	DSA 600-74-D-0521 12/31/73-1/31/74 DSA 600-74-D-0544 2/26/74-7/15/74 (Ex. R-24, 25).	3/18/74 (Ex. P-9)	None in Evidence.
Standard Oil Company/Chevron	DSA 600-76-D-0338 6/27/75-12/31/75 (Ex. R-16).	6/10/74 (Ex. P-10)	None in Evidence.
Gulf Oil Company	DSA 600-74-D-0335 11/1/73-12/31/73; DSA 600-74-D-0509 1/1/74-6/30/74; DSA 600-75-D-0355 7/23/74-12/31/74 (Ex. R-22, 23, 17).	12/26/73 (Ex. P-11)	DSA 600-75-D-0528 2/1/75-6/30/75 Tenn. Valley Authority TVA 76×70-71333-2 (Ex. R-31, 27).
Shell Oil Comany	Energy Research and Development Administration—E(04-5)-1004 6/25/75-7/25/79; DSA 600-76-D-0507 7/1/75-6/30/76; DSA 600-76-D-76 7/1/75-6/30/76; DSA 600-76-D-0375 7/2/75-12/31/75 (Ex. R-34, 18, 19, 30).	3/17/75 (Ex. P-12)	None in Evidence.
Continental Oil Company	None in Evidence	7/5/73 (Ex. P-13)	DSA 600-75-D-3497 8/31/74-7/31/75 (Ex. R-33).

These contracts in Table II were listed in petitioner's Exhibit P–4 and some of them have already been included in Table I above under the section of this decision entitled "Drilling on Federal Land or Leases." Respondent objected to the admission of Exhibit P–4 at the hearing and in asserting in its post-hearing brief that it should be totally disregarded, respondent characterized the exhibit as:

"* * * a hodge-podge of related contracts characterized by legal conclusion headings such as, "U.S. Government prime contractors", "prime contractors U.S. Government leases", "prime Government contracts during period of subcontract", "subcontracts submitted by LOFFLAND under discovery", "applicable LOFFLAND subcontracts with dates". * * * [which] are improper characterizations, totally false in some instances as to prime contractors, half truths as to some companies listed, and totally false as to LOFFLAND."

The Government prime contracts included in Exhibit P–4 furnished by petitioner to respondent at the hearing were offered and admitted as Exhibits R–15 through R–36. Any of the material in the tables of Exhibit P–4 which could not be verified by source documents in evidence was omitted from Table II.

Respondent also points out in its brief that:

"It is certain that no Government prime contracts for supplies or services were furnished from Texaco, Continental Oil, ARCO, Mobil, Signal, or El Paso Natural Gas. (Brief pg. 52.)"

As to Texaco, ARCO, Mobil, Signal and El Paso, no Government prime contracts were submitted, nor cataloged in exhibit P–4 or in Table II above. As to Continental Oil, Exhibit R–33 was admitted in evidence (Tr. 645) and shows a Defense Supply Agency contract as indicated in the above Table II.

It is petitioner's position that respondent is a regular Government subcontractor, primarily a first tier subcontractor to major oil companies (Brief p. 21). 41 CFR 60–1.3(w) and (x) provide:

"(w) The term "subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

"(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, *in whole or in part, is necessary to the performance of any one or more contracts;* or

"(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

"(x) The term "subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who *has held a subcontract* subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor. (Emphasis Added.)"

Although Table II above and Table B of Exhibits P–4 contains a list of oil companies which had drilling contracts with Loffland and also contracts to supply oil products to the Government, the petitioner has failed to prove that any of the holes drilled by Loffland were in whole or in part necessary to the performance of any one or more contracts. The evidence does not prove that oil products from any of these holes was ever sold to the Government or would have been sold to the Government if the holes which Loffland contracted to drill were completed and became producing wells. In some of the contracts listed in Table B of Exhibit P–4, there was no proven connection between Loffland and the Government. The contract documents in support of Exhibit P–4 were offered in evidence as petitioner's Exhibits 5 through 26; although Exhibit P–16, 17, 19, 20, 23, 25, and 26 were not admitted by the Administrative Law Judge on the basis of an objection by respondent that the drilling under these contracts was not performed on Federal lands or leases and, therefore, the exhibits were not material to this case.

Petitioner argues that:

"* * * it is probable that some of the oil from wells drilled by Loffland under these contracts was sold by the major oil companies to the Government. Due to the Standard Oil Company practice of intermingling oil supplies, it is impossible for Petitioner to prove this, as we have consistently maintained. * * * Many of the oil company's prime Government contracts compiled in Exhibit P–4 are with the Defense Supply Agency (DSA), but if Interior had the resources and saw fit to further investigate this matter, we are sure that most oil companies at various points in time provide fuel and oil products to many Federal agencies throughout the United States."

These conjectural statements do not serve to show that any of the holes drilled by Loffland were in whole or in part necessary to the performance of any one or more contracts with the Government. It is not contested that Loffland drills 500 holes each year for oil companies (Schultz, Tr. 1351) however, there is no proven connection between Loffland and the Government in regard to most of these contracts or the contracts in the seven exhibits offered by the petitioner which were properly excluded. These voluminous documents were not offered by the respondent to impeach Table B of Exhibit P–4 but were offered by petitioner in support of its Exhibit P–4. Most of petitioner's Exhibits 5–26 were admitted in evidence and the contracts in those exhibits were listed in Table II with eight oil companies that had both drilling contracts with Loffland and contracts to furnish supplies to the Government. Although all of the source documents were not admitted, the other oil companies are listed in Table B, Exhibit P–4, which remains in evidence. The record of this proceeding contains several hundred pages of transcript and exhibits. Although this evidence was relevant and material to the issues in this case many of the documents were not cited by the parties and the specific basis for some of the arguments presented is not always readily apparent.

Petitioner's theory seems to imply that there are legal presumptions that Loffland is subject to the jurisdiction of OEO and that the question of jurisdiction is not in issue because it is probable that some of the oil from wells drilled by Loffland was sold by the oil companies to the Governemnt. If there should be such legal presumptions they could be readily applied to the facts in Table II, above showing several oil companies which had drilling contracts with Loffland and also with the Government.

Intermingling of Oil

Although petitioner asserts that there is a standard oil company intermingling of supplies it has failed to prove either intermingling as a standard practice or intermingling by Loffland. The cover sheet of Exhibit P–4 is a document prepared by Petitioner to explain the information in the various columns of the exhibit. On the cover sheet there is a statement that:

"The services provided by Loffland enables the identified prime contactors to extract crude oil. After refining and *intermingling in storage*, gas and oil is supplied to various Government agencies, most notably the supply of gasoline and oil to military establishments through the Defense Supply Agency (DSA). (See Columns 3 & 4.) Although it cannot be proven conclusively *due to the intermingling of supplies*, it is probable that one or more of the prime Government contracts listed in this column were partially fulfilled by petroleum products from wells drilled by Loffland. This is because of the concurrent time periods of these contracts. [Emphasis added.] (Ex. P–4.)"

This paragraph concerning intermingling of products is considered to be in the nature of statement of counsel and not evidentiary in character. It is given no probative value.

In answer to a hypothetical question petitioner's witness, the Associate Director of the Office of Federal Contract Compliance Programs of the Employment Standards Administration, United States Department of Labor, stated:

"Well of course, I'm aware of the fact that the oil which is drilled from Federal leases is often *intermingled in storage tanks* and it's difficult to determine when a contractor purchases oil as to whether or not the oil that's being purchased is or is not drilled from a Federal lease. * * * [Emphasis added.] (Bierman, Tr. 206.)"

There was no foundation laid for this statement and neither its basis or the source of the information pertaining to intermingling were disclosed by the record. The rationale of the witness is demonstrated by the remainder of his answer to petitioner's hypothetical question in which he states:

"* * * However, there's another kind of relationship here that I think might help to explain it. In the case, for instance, of manufacture of steel; it's been our determination that when General Motors purchases steel from Bethlehem Steel, a part of which goes into the construction of the tank, obviously the purchase of steel itself is essential to building a tank. And as long as the purchase is essential to the performance of the prime contract, then that subcontractor—in this example, say, United States Steel—is covered by the Executive Order as the result of that particular purchase.

"I would say similarly here *if* an oil company is intermingling its oil and another contractor is purchasing the oil for the performance of the prime contract, if indeed the oil company itself is using the oil or selling it under a prime contract, part of that oil was drilled on Federal—through a Federal lease and, therefore, since it's impossible to separate that, that is essential to the performance of the prime contract and would be a subcontract. [Emphasis added.]"

Another example of intermingling of products is included in petitioner's Brief (p. 14; Appendix A, NAM Publication p. 21), in which a uniform maker commingles wool fiber purchased from many sources. Thereafter, he uses the commingled wool to make cloth which is eventually made into many different articles of clothing, one of which he sells to the Government. The answer given in the example is that the regulations cover an employer's providing necessary supplies or services at some point in the Government procurement chain, despite the fact that the supplies or services cannot be directly traced to or specifically identified in the ultimate product or service purchased by the Government.

One of these examples given by petitioner stated as a fact that part of the steel purchased from the steel company went into the manufacture of the tank and the other stated as a fact that the wool fiber purchased from many sources was commingled. These examples are distinguished from the factual situation in this proceeding where the intermingling of oil supplies has not been established by creditable evidence. Petitioner also asserts that the major oil companies have chosen to intermingle the oil and as evidence of this decision, we have the testimony that the standard EEO clauses are routinely put into all or many of its contracts (Brief p. 22; citing *Pittman*, Tr. 644; *Schultz*, Tr. 1267). No valid rationale of this assertion is offered and we find that the presence of an Equal Opportunity Clause in the leases is not sufficient evidence to prove that the major oil companies would commingle oil produced from holes drilled by Loffland.

Petitioner argues that the fact that the Government cannot prove or "track" the oil from the hole drilled by Loffland through the major oil company refinery to the final product sold to the Government is irrelevant and does not, in petitioner's view, invalidate Loffland's coverage under the regulations (citing *Williams*, Tr. 572; Bierman, Tr. 234 *et seq.*). Petitioner's reasoning is that the major oil company has chosen to intermingle the oil, regardless of source; and by doing this, and by later selling *part* of it to the Government, the major oil company has made the decision that *all* of its operations are subject to Government regulations and all of its subcontractors are also subject thereto (citing *Bierman*, Tr. 207, 234). Petitioner notes that: "This conclusion is not applicable if the major oil company clearly *segregates* its oil as to source and supply" (Brief p. 22). Petitioner's theory seems to imply there is a legal presumption that the oil products produced by the major oil companies are commingled and that the burden of proof is on the respondent to show that the major oil companies clearly segregate their oil as to source and supply.

Additional Jurisdictional Basis

It has been established that Loffland, as a Prime Government contractor, is subject to Executive Order 11246 and the regulations issued thereunder. As a continuing Government contractor, Loffland has not ceased to be a Government contractor under the policy of the Department of Labor used in determining the applicability of the Executive Order and the Regulations. Loffland is, therefore, subject to the jurisdiction of this proceeding.

Petitioner has also sought to establish that respondent is subject to the Executive Order and Regulations by its assertions that Loffland is a government subcontractor because it had contracts to drill on federal leases and because it had contracts for the furnishing of services to major oil companies in whole or in part necessary to the performance of any one or more of its contracts with the Government. Other theories on which petitioner sought to establish jurisdiction were based on the facts that the equal opportunity clause specified by Executive Order 11246 was included in most Loffland drilling contracts admitted in evidence and that Loffland regularly submitted annual EEO–1 reports. Petitioner asserted that it had established jurisdiction because the equal opportunity clause in the contracts gave legal notice to respondent that the contracts were Government subcontracts subject to the Executive Order and that respondent, by accepting the contracts, has specifically agreed to the application of that clause, and also because Loffland has represented itself as a Government contractor or subcontractor by submitting annual EEO–1 reports since 1968 (Brief, P. 22). Since petitioner has already established jurisdiction over Loffland as a prime government contractor we do not reach the legal conclusions as to whether Loffland is subject to the jurisdiction of OEO on the basis of the additional theories advanced by petitioner. These additional theories would involve legal conclusions as to whether the Government is bound by its regulation which did not repeal a conflicting earlier regulation; whether there are legal presumptions that major oil companies intermingle oil products, and that the Government is vested with jurisdiction without proof; whether the insertion of the equal opportunity clause in contracts with oil companies is an agreement that the drilling company submits to Federal jurisdiction, and whether the Government may acquire jurisdiction as a result of agreements between private parties; and whether by submitting EEO reports Loffland has represented itself as a government contractor, and if the effect of such representations would vest the Government with jurisdiction.

Utilization of Minority Groups Compliance with Nondiscrimination Clause

The Proposed Cancellation, Termination, Debarment, and the Notice of Hearing dated June 12, 1975, states that OEO proposes sanctions against respondent for its noncompliance with the nondiscrimination clause required in Government contracts by Executive Order 11246 and implementing regulations.[5]

41 CFR 60–2(a)(1) provides: "Any contractor required by § 60–1.40 of this chapter to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Exectuive Order 11246, as amended (30 FR 12319). Until such programs are developed and found to be acceptable and in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32, the contractor is unable to comply with the employment opportunity clause. * * *" OEO has alleged that respondent's affirmative action plan (AAP) is not in accordance with 41 CFR 60–2.10, 60–2.12(a), (c), (d), and (g).

41 CFR 60–2.10 provides:

"* * * An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist."

OEO contends that it has, by statistical evidence of a long and pervasive practice of employment discrimination, established

[5] This nondiscrimination clause is set out in Section 202 of E.O. 11246 and at 41 CFR 60–1.4(a) and provides as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

prima facie that respondent has employment practices in its Southern Division which discriminate generally against minorities, women and blacks. This evidence indicates that between 1966 and 1972, the greatest utilization by respondent in all positions in the Southern Division was 7.2 percent (in 1972) of minorities, 5.5 percent (in 1972) of blacks (Govt. Exh. 1–B–2; Tr. 50), and 1.7 percent (in 1970) of females (Govt. Exh. 1–A–1, p. 2). The evidence presented concerning past minority employment by respondent is summarized as findings of fact in attached tables III–VI.

OEO did not give credit to data reflecting substantial recent improvement in respondent's utilization of minorities and blacks. At the hearing Respondent entered exhibits showing that subsequent to the date of the Government's "Proposed Cancellation, Termination, Debarment, and Notice of Hearing" the number of minority employees in the Southern Division had been substantially increased. The greatest increase was in the entry level position of roustabout where there was a 63 percent minority employment. As of April 1, 1976, minority and black representation in rig positions in Respondent's Southern Division were as follows:

	Total Minorities	Black Minorities
1. Roustabouts	63% (35/56)	55% (31/56)
2. Crane Operators	28% (5/18)	17% (3/18)
3. Welders	25% (3/12)	17% (2/12)
4. Electricians	0% (0/14)	0% (0/14)
5. Floormen	21% (28/129)	13% (17/129)
6. Motormen	14% (6/43)	5% (2/43)
7. Derrickmen	19% (8/43)	12% (5/43)
8. Driller and Asst. Drillers	10% (5/49)	2% (1/49)
9. Rig Superintendents	17% (4/24)	0% (0/24)
Total	24% (94/388)	16% (61/388)

The above figures are a summary of the information in respondent's exhibit R–87 and pages 1409–1414 of the transcript. There was a slight discrepancy in exhibit R–87 which lists 63 minorities and 48 black minorities in entry level by classifications (Roustabout/Floorman) whereas the cover sheet (called a summarization by respondent's witness on pg 1413 of the transcript) shows a total of 68 minorities and 49 black minorities. The figures from the detained chart in exhibit R–87 were used since the exhibit was prepared by respondent and the detailed analysis of the positions considered to be a more useful presentation of respondent's position than the information on the cover sheet.

In *McDonnell-Douglas* v. *Green*, 411 U.S. 792, 93 S.Ct, 1817 (1973), the Supreme Court held that a complainant in a private, non-class-action complaint proceeding under Title VII of the Civil Righs Act of 1964, 42 U.S.C. 2000e *et seq.* has the burden of establishing a *prima facie* case of racially discriminatory hiring practicies by the respondent employer. *Id.* at 802, 1824. If the complainant does so, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for its rejecting the employee. *Ibid.* Although the burden of proof is the same in this proceeding there are substantial differences in the subject matter of a Title VII dispute, which involves a complaint that a specific act by an employer constitutes racial discrimination against employees or applicants for employment, and the subject matter of the instant dispute, which involves the federal government's allegation of a discriminatory hiring policy by an employer against minorities generally.

In asserting that it had established a prima facie case of discriminatory hiring practices by respondent OEO cited as authority: "*Jones* v. *Leeway Motor Freight*, 431 F.2d 245 (10th Cir. 1970); *Parham* v. *S. Western Bell Telephone*, 433 F.2d 421 (8th Cir. 1970); *U.S.* v. *Jacksonville Terminals*, 451 F.2d 418 (5th Cir. 1971)."

Jones v. *Lee Way Motor Freight, supra*, held that a prima facie case was established by statistics showing that an employer had utilized no blacks in certain higher-paying jobs during the 4 years preceding its failure to transfer four black employees who were the complainants in this case to these jobs. *Id.* at 247. *Parham* v. *Southwestern Bell Telephone, supra*, held that statistics revealing an extraordinarily small number of black employees, except for the most part as menial laborers, established that an employer's rejection of an application by the black complainant was the result of discriminatory hiring practices and was therefore a violation of Title VII. *Id.* at 426. The courts in these cases also held that evidence submitted by the employers concerning efforts to offer equal employment opportunities to blacks made *after* the institution of the Title VII actions did not alter the establishment of the *prima facie* cases by the complainant employees because the only relevant concerns were the employment practices in effect at the time when the complainants were denied employment opportunities. *Jones* at 248; *Parham at* 426. *Jacksonville Terminals, supra* is not to the contrary.

Even putting aside the fact that respondent's history of utilization demonstrates far better efforts than those of the employers in the above-cited Title VII cases, there is a more critical difference distinguishing them from the instant dispute. Under Title VII, an aggrieved complainant must show that he has been the victim of discrimination in order for the court to make restitution for damages to him on its account. The examination of facts need ony run up until the act alleged by the complainant to be discriminatory. Any subsequent attempts by the employer to end discrimination are irrelavant to whether it has discriminated against the complainant. In the instant case, the governmant is seeking to show that respondent has failed to comply with E.O. 11246's directive that, as a government contractor or subcontractor, it must end employment discrimination on the basis of race. Respondent's entire history of compliance must be examined in order to determine whether it has complied with this directive. To dictate that a company's recent efforts to end employment discrimination made during the period of administrative review are not relevant to the issue of whether that company has made an effort to comply with E.O. 11246's directive to end employment discrimination would remove the company's incentive to strive toward compliance during the lengthy process of administrative review. The prime goal of E.O. 11246 is to see that compliance is achieved, not, as under Title VII, to make restitution for illegal discrimination. The data concerning respondent's efforts to achieve compliance with the nondiscrimination clause of E.O. 11246, including its recent efforts, are therefore relevant to the issues in this proceeding. There are practical reasons why respondent shoud reap the benefits in administrative proceedings from the fact that it has recently hired more minorities. By employing more minorities than predicted in its AAP respondent might assume that he takes the risk that the Government might claim its AAP deficient in that it has been demonstrated that more minorities were actually available for hire. Since respondent should not be penalized in any way for hiring minorities, its AAP should not be considered deficient for this reason and it should be given credit for its efforts when deciding whether underutilization exists.

Repondent's recent efforts have gone substantially toward ending underutilization of minorities in its Southern Division. As of April 1, 1976, respondent utilized in all of its Southeren Division positions 24 percent minority employees and 16 percent black minorities (Resp. Exh. R–87). The entry-level rig positions where respondent's efforts to end the underutilization therein have, justifiably, in the short run been aimed, respondent, as of April 1, 1976, achieved 34 percent minority representation and 26 percent black representation (Resp. Exh. 87; Tr. 1409–1414). There is no indication that this increase in minority representation is temporary. To the contrary, respondent's President testified that he intended to use new prospective rig positions in 1976 to increase minority representation further in all job classifications, including upper-level positions (Tr. 1461).

Respondent's compliance history indicates that it has steadily increased minority and black representation in upper-level rig positions. It has recently promoted a black employee to the position of driller (Resp. Exh. 87; Tr. 1215). The driller is second in authority, responsibility, and remuneration only to the rig superintendent (Tr. 871). The driller and rig superintendent have authority to hire employees for lower rig positions (Tr. 875–878).

The elements of the utilization analysis required by 41 CFR 60–2.10 are set out in 41 CFR 60–2.11 which provides:

"* * * Affirmative action programs must contain the following information:

"(a) Workforce analysis which is defined as a listing of each job title as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression, there must be indicated the order of jobs in the line through which an employee could

move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges. For each job title, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

"(b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities). * * *"

41 CFR 60–2.11(b) provides that " 'Underutilization' is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability." Concerning the availability of minorities, in its AAP, dated January 23, 1973, respondent stated that "there does not exist a qualified minority labor force in [its] labor area for upper level job classifications" (Gov't. Exh. 1–A–2, p. 9). The roustabout and floorman positions, entry-level positions (Tr. 913), require only minimal skills (Tr. 250, 915–919). Although it prefers experienced floormen, respondent has hired inexperienced persons as floormen in the past (Tr. 1043). Respondent demonstrated at the hearing that the motorman, derrickman, driller, and rig-superintendent upper-level positions each require substantial specific skills (Resp. Exhs. 50–53, Tr. 919–927, 981). Experience in other industries does not translate into meaningful experience for these positions (Tr. 981), and utilization of inexperienced persons in these upper-level drilling-rig positions could result in accidental injury or loss of revenue (Tr. 883, 983). "Availability" of minorities, as used in section 2.11(b)(1), does not mean simply "availabilty of minorities with requisite skills." It depends instead on all relevant factors including the eight factors set out therein.[6] Section 2.11(b)(1) provides expressly that "[i]n determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the [eight] factors." The purpose of the required utilization analysis is to identify areas where an employer is not adequately utilizing minorities.

In its AAP filed with OEO on January 26, 1973, respondent presented a chart, entitled "Personnel Utilization Analysis," listing each job according to the title used by respondent (Govt. Exhibit 1–A–2). Only the rig job classifications are reproduced below:

Personnel Utilization Analysis

	Total emp. 12/15/72	Total		White		Negro		S/A		Indian		Probable vacancies next 12 mo.
		M	F	M	F	M	F	M	F	M	F	
Rig Supt	20	20		18						2		0
Drillers	38	38		33						5		15
Derrickman	41	41		39				1		1		28
Motormen	39	39		34				1		4		16
Floormen	112	112		104				8				180
Electricians	9	9		9								0
Welders	7	7		7								0
Crane operators	11	11		7		2		1		1		3
Roustabouts	39	39		21		17		1				25

Although this workforce analysis fails to state the wage rate or salary range for each job title as required by section 60–2.11(a) the omission is merely a technical violation of these regulations and has not been raised as an issue.

OEO chose to focus its allegations against respondent on its action concerning these rig positions (Govt. Exh. 1–C–5). Respondent's hiring practice concerning other positions are not an issue in this hearing. The rig positions are set out here along with the percentages (to the nearest whole percent) representing respondent's utilization therein of all minorities, black minorities, and women as compared to total employment therein, as taken from the workforce analysis in respondent's AAP dated January 21, 1973:

	Total Minorities	Blacks	Women
1. Roustabouts	41% (18/44)	39% (17/44)	0% (0/44)
2. Crane operators	36% (4/11)	18% (2/11)	0% (0/11)
3. Welders	0% (0/7)	0% (0/7)	0% (0/7)
4. Electricians	0% (0/9)	0% (0/9)	0% (0/9)
5. Floormen	7% (8/112)	0% (0/112)	0% (0/112)
6. Motormen	13% (5/39)	0% (0/39)	0% (0/39)
7. Derrickmen	5% (2/41)	0% (0/41)	0% (0/41)
8. Driller	13% (5/38)	0% (0/38)	0% (0/38)
9. Rig Superintendent	10% (2/20)	0% (0/20)	0% (0/20)
Total	14% (44/321)	6% (19/321)	0% (0/321)

Respondent's organization divides the United States into six geographical areas called "divisions," including the Southern Division in Louisiana and the Mid-Continent Division in Texas and Oklahoma (Tr. 858–859). Respondent's employment practices in its Southern Division are in issue in this proceeding (Tr. 426). At the time of this hearing, respondent's Southern Division had 12 rigs in operation, six of these being off-shore rigs, three barge rigs, and three land rigs (Tr. 863). Each land rig uses two or three crews, consisting of one driller, derrickman, and two motormen. One or two rig superintendents, or toolpushers (Tr. 871), supervise each land rig (Tr. 863). Off-shore rigs use six employees as well as other employees used as crane operators, roustabouts, electricians, and welders (Tr. 863). There are usually two rig superintendents for each off-shore rig (Tr. 864–865). The rig superintendent either has complete responsibility for the operation of the equipment at the rig site or shares it with another rig superintendent in 12-hour shifts (Tr. 868).

When a rig finishes a job, it moves to another site to begin a new job. When a rig moves, some employees do not follow it to this new site because it is too far from their homes (Tr. 870, 878–881). When there is no new job for a crew to move to, all employees on that rig, with the exception of the rig superintendent(s), are considered to be laid off (Tr. 874). When a rig is formed to undertake a new job, the rig superintendent will select a driller who assembles the crew

[6] 41 CFR 60–2.11(b)(1) provides:

"(1) In determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the following factors:

" '(i) The minority population of the labor area surrounding the facility;

" '(ii) The size of the minority unemployment force in the labor area surrounding the facility;

" '(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

" '(iv) The general availability of minorities having requisite skills in the immediate labor area;

" '(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

" '(vi) The availability of promotable and transferable minorities within the contractor's organization;

" '(vii) The existence of training institutions capable of training persons in the requisite skills; and

" '(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.' "

(Tr. 871–872). Both the driller and rig superintendent have the authority to hire and fire crew personnel, however, the driller most often takes the initiative in these matters (Tr. 875, 1200). On occasions, the driller will consult with the rig superintendent in order to determine whether he knows of someone who is available to fill a position (Tr. 876–877), but this is done only on rare occasions (Tr. 877–878). An effort is made by the driller to hire employees who are located not distant from the particular job site (Tr. 878–879) and he usually hires crew members from within a reasonable traveling distance to the rig site (Tr. 885). The Southern Division has the power to reject an employee hired by a driller (Tr. 879–880).

The eight factors set out in 41 CFR 60–2.11(b)(1) refer to "the labor area surrounding the facility" in sections (i) and (ii) and to "the immediate labor area" in sections (iii) and (iv). Section (v) refers to "the area in which the contractor can reasonably recruit." Regulations (i) through (iv) were apparently prepared mindful only of employers with stationary work locations, that is, stationary facilities. Respondent is not such an employer. Its drilling rigs are transitory (Tr. 588) and often perform their work offshore or in other sparsely populated areas. Since rig sites change continually, it is apparent that there is no constant specific identifiable "labor area surrounding the facility" or "immediate labor area" associated with the rigs (Tr. 588, 595). In order to avoid the necessity of constant and burdensome revision of utilization analyses, it is necessary in this case to interpret these regulations in order to bring them into line with the transitory nature of drilling rig facilities. Mr. Jack Bluestein, Assistant Director of OEO's Contract Compliance Division (Tr. 1511–1512), testified that OEO had no objection to allowing respondent's AAP to consider a large geographical area rather than individual rig sites so long as it considers the area where its rigs operate (Tr. 1533). Since respondent does most of its hiring by recruitment, it is appropriate to consider the area for factors (i) through (iv) to be the "area from which [respondent] can reasonably recruit," as the Regulations provide for factor (v). Doing so results in a comparison of respondent's utilization of minorities to the minority population, to the minority unemployment force, the percentage of the minority work force as compared with the total work force, and to the general availability of minorities having requisite skills in this recruitment area. This comparison is utilized because respondent will reasonably be expected to do most of its hiring in this area.

Respondent's Southern Division is centered at New Iberia, Louisiana (Govt. Exh. 1–A–1; Tr. 28). Drilling activities of the Southern Divisions 12 rigs are in parishes throughout southern and off-shore Louisiana (Tr. 863). These rigs are set up at various job sites and remain only until the drilling jobs there are completed (Tr. 865–866). Rig sites change continually (Tr. 877). Big employees customarily commute from their homes to these job sites. Employees, as a rule, will not commute great distances (Tr. 878–880), usually not more than 100 miles one way from their homes to job sites (Tr. 881, 885–886). If persons were offered employment requiring them to travel more than 100 miles, it is likely that it would be turned down (Tr. 886). Thus the recruitment area for respondent's Southern Division is approximately the sum of the areas located within 100 miles of each drilling job site. In formulating its AAP, respondent considered population data of 22 parishes in Louisiana from which its active employees came as of December 31, 1972 (Resp. Exh. 75–H; Tr. 1282). There is nothing in the record indicating that the distribution of employees at this time was the result of an unusual geographical distribution of rig sites or that this distribution was in any other way atypical, and this distribution therefore indicates the areas from which respondent's rig sites are generally accessible. Mr. W. E. Schultz, respondent's president testified that the 22 parishes constitute the area from which people come to work for respondent's Southern Division and that they encompass the area in which its rigs work (Tr. 1282, 1482). In view of the difficulty of calculating the exact geographical areas from which respondent may draw employees to its rig sites at a specific time due to the continual shifting of rig sites, and inasmuch as census data is prepared on a parish-by-parish basis, respondent's geographical area will be considered to be all of these 22 parishes. The purpose of the utilization analysis is to achieve a general idea of the population characteristics of an employer's community. Considering all 22 parishes is the nearest practical approximation that could achieve this result. There is no indication that the general area from which employees are available had changed by April 1, 1976, the date on which statistics were compiled by respondent to show that greater members of minorities had been employed. Thus the appropriate geographical area from which to calculate population data against which to measure respondent's utilization of minorities is the 22 parishes from which its active employees came on December 31, 1972 (Resp. Exh. 75H; Tr. 1053, 1061).

The unadjusted figures in respondent's exhibit 75–H show that 28.9 percent (597,625 of the 2,066,605 total population) of the 22 Parishes were minorities. Of the total labor force of 719,809 there were 178,645 minorities; 24.8 percent. Of the total minority labor force of 178,645, unemployment is 15,237 or 8.5 percent. These figures are accepted as the statistics to be used in determining whether minorities are underutilized by Loffland.

OEO considered respondent's labor area to be the Southern third of Louisiana and entered statistics for that area (Govt. Exh. P–3; Tr. 91–92). The minority averages for the Southern third of the State of Louisiana were: population 30.5 percent, labor force 26.9 percent, and unemployment rate 10.3 percent. Government Exhibit P–3 also shows that for the entire State of Louisiana the minority population was 29.2 percent, the minority labor force 25.7 percent, and the minority unemployment rate 9.7 percent. The regulations do not prescribe a precise mathematical formula for using minority statistics in determining whether minorities are underutilized, therefore the differences in the statistics of the 22 relevant parishes and the other areas for which statistics were supplied are not so material that they would appreciably affect the determination of utilization in this proceeding. The concept that the actual labor area must be used is important to Loffland however, since its evidence indicates that there are few if any minorities in some of the counties in its Mid-Continent division where statistical difference would be crucial.

There was also evidence suggesting that Loffland's Southern Division labor area was the Eastern half of Louisiana (Tr. 223). Not only has it been determined that the 22 parishs where it operates comprise the actual labor area but the statistics presented are insufficient to make an analysis of the population, labor force, and unemployment rates of the Eastern half of Louisiana. The statistics for the exact area under consideration are necessary since they vary appreciably from parish to parish. For example the minority population in West Feliciana Parish is 67.2 percent while in Cameron Parish it is only 6.9 percent (Exh. P–3).

Respondent's AAP dated January 21, 1973, employs what it calls adjusted figurs for the computation of racial mix among the 22 parishes and for establishing it's goals and timetables (Tr. 1061–1076, Respondent's Exh. 75–4). To establish adjusted racial mix figures respondent's statistical method is to list the 22 parishes together with the number of "total active employees" (of Loffland) from each parish. From thee 22 parishes there are a total of 335 Loffland employees. These numbers are used to calculate the percentage of Loffland employees in each parish. This percentage is then applied to the census figures to arrive at the adjusted figures. For example in Acadia, the first Parish listed, there are 25 Loffland employees. These 25 represent 7.46 percent of all 335 Loffland employees from the 22 parish labor area. This percentage then becomes the key factor for all "adjustments" of census figures for Acadia. For instance, Bureau of Census and Louisiana State Employment Agency Statistics show the minority work force of Acadia to be 2,806 (Tr. 1061, Respondents Exh. 75–H). Respondent's "adjusted minority work force" for Acadia however is 7.46 percent of 2,806 or 209.3. Quaere: If Loffland had no employees from a specific parish, should the adjusted minority work force then be zero? The adjusted figures obtained by applying the percentage of Loffland employees in each individual parish to the census figures, are added up for each parish to establish total adjusted figures. From the census figures, the total minority work force for all parishes is 178,645, but adjusted by respondent's method the total minority work force is 4,258.2, a difference of 174,386.8 (Resp. Exh. 75–H). This adjusted minority work force figure is then used together with a similarily adjusted total work force figure to calculate the percentage of minority work force to total work force to be 22.5 percent (Resp. Exh. 75–H, Tr. 1061). This is the figure used by respondent as the percentage of

minorities in the work force in its recruitment area which it used in the formulation of its goals and timetables. Respondent's expert witness, Dr. John M. Bonham, testified that this methodology is used in forecasting or projecting racial mixes in particular categories over a certain period of time (Tr. 1107, 111) and that he believes the statistical methods used by Loffland in formulating it's AAP to be good analysis technique for this type of forecast (Tr. 1114).

Begining with a minority work force of 178,645 (15,237 of which are unemployed), Loffland by using this technique concludes that only 73 minorities throughout the entire 22 parish labor area are actually available to Loffland for hiring (Exh. R–77). This figure is arrived at by first applying an "unemployment constant" of 3.5 percent to the total minority work force figure of 178,645 (Exh. R–77). This computation establishes that 6,253 minorities in the labor area are considered unemployable and is intended to account for those considered "hard core" unemployed or who are between jobs (Tr. 1067, 1123). Unemployable minorities are subtracted from unemployed minorities leaving 8,984 minorities apparently available to Loffland on the unemployment rolls alone. This figure, 8,984, is then "adjusted" by respondent to show how many of these unemployed persons would be available only to the drilling industry (Tr. 1067). To make this adjustment Loffland multiples 8,984 by the fraction of the total numer of rig jobs (5,859) over the total laor force for the labor area (719,809). This calculation leaves 73 minorities available to Loffland. To arrive at a goal of 22.5 percent in entry-level positions 638 minorities must be hired, but only 73 or 11.4 percent of the required minority employees are available. At this junction Loffland interjects the rationale that, under its AAP, employment of minorities may be accelerated three-fold; hence, it uses a 40 percent minority availability. The use of the 40 percent minority availability factor may be illustrated by an example taken from respondent's goals and timetable for the floorman position (Resp. Exh. 75–L). There are 123 total floorman positions (Tr. 1063) and in the first year a 62.6 percent turnover occurs resulting in 77 job openings. (At the hearing Respondent adequately established the distinction between job turnover and personnel turnover on the same job.) To determine how many minority personnel can or should be hired respondent calculates that the percentage of "jobs added" this year is 62.6 percent. 22.5 percent of which is 14.08 percent thus, 14.08 percent of new hires should be minority representatives. But, Loffland's analysis assumes only a 40-percent availability of minority personnel; 40 percent of 14.08 percent is 5.63 percent, thus, 5.63 percent or 4.3 of 77 new floorman hired would be minority personnel. By comparison, if hiring is to be done at the rate commensurate with the racial mix of the community (as Loffland calculates it) 22.5 percent of the 77 new floorman hired, 17.3 would be minority personnel. Loffland's President who was called as a witness testified that this analysis is merely a guideline and "does not mean that right today or tomorrow or next year we are hiring a specific ratio of minorities" (Shultz, Tr. 1090).

These statistical analysis techniques are based on a number of assumptions (Tr. 1108). Two of these assumptions are: that racial mix is based on and limited by the number of persons from each parish already employed by Loffland; and that availability of minority employees is based in large part on and limited by the ratio of Loffland rig employees to the total work force in the labor area (Exh. R–77).

Although the regulations do not specify the means of combining the relevant factors, including the eight specific factors delineated in 41 CFR 60–2.10(b), to determine the minority goal Loffland argues that its statistical method is valid as a means of forecasting or projecting racial mixtures and availability of minority employees for rig job classifications in general. As to the entry level rig job classification of roustabout this issue is moot since recent employment statistics which are considered in this decision indicate that already 63 percent of respondent's roustabouts are minorities and 55 percent are black minorities (Resp. Exh. 87; Tr. 1409–1414). Although only 21 percent of the southern division Floormen are minorities and only 13 percent are black minorities respondent is rapidly progressing in the employment of minorities and the primary problem concerns the availability, employment, and promotion of skilled minorities in upper level rig positions.

Loffland's adjusted figures are more relevant to the availability of unskilled minorities from the minority population or labor force in general. Minorities in upper level rig jobs must be obtained by promotion of trained minorities from Loffland's lower level rig jobs and by hiring of minorities previously employed by other drilling companies. The purpose of an AAP is to reverse the effects of past underutilization of minorities as soon as practicable. Since the affirmative action programs submitted by Loffland do not meet this objective, unadjusted census figures and the best evidence available must be applied in the consideration of the specific factors prescribed by the regulations.

Respondent's AAP does not provide separate goals and timetables for black minorities since minorities are treated collectively (Resp. Exh. 75–H). As a result the chief deficiency, lack of black minority representation in rig jobs, is not specifically dealt with by Loffland and is obscured. 41 CFR 60–2.12(k) provides:

"(k) In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropirate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the compliance agency or OFCC."

Since Loffland has not delineated black minorities and non-black minorities there are no specific statistics in the record for the 22 parish labor area upon which to calculate a racial mix percentage for the black minority. Petitioner's Exhibit P–3, a population analysis, including black minority figures for the southern third of Louisiana provides additional information but does not include statistics for all 22 parishes of Loffland's labor area. This exhibit indicates however, that in the entire southern third of Louisiana the average minority population is 30.5 percent and the black minority population is 30.2 percent and that in the entire State of Louisiana the minoirty population is 29.2 percent and the black minority population is 29.0 percent. Thus, the difference between minority population and black minority population in these two geographical areas is less than 1 percent. Exhibit P–3 also indicates that statistics for black minority population, black minority labor force, and black minority unemployment rates are not available for many of the parishes.

A note on exhibit P–3 states that the minority data pertains primarily to blacks since there are only apparently 10,000 "other" individuals. The words "other individuals" evidently means "minorities other than black minorities." Since there is nothing to indicate any unusual distribution of the 10,000 "minorities other than black minorities" and since in the statistics presented in Exhibit P–3 the difference between the number of minorities and the number of black minorities is less than 1 percent, the percentages concerning total minorities presented by respondent will be adopted in this proceeding for use as a factor in determining whether black minorities are underutilized (Resp. Exh. 75–H).

Applying the criteria specified in the regulations these figures indicate that respondent had fewer black minorities than would reasonably be expected by their availability in respondent's labor area in all rig job classifications except that of roustabout where 63 percent where minorities and 55 percent were black minorities. A sufficient number of black minorities were available for all entry level positions where no special skills were required. Respondent could reasonably be expected to recruit, train or promote minorities for all rig job classifications.

Uner the criteria of the Regulations black minorities would be underutilized by respondent even if its adjusted minority population figure of 22.5 percent had been adopted rather than the unadjusted census figure. Only in the case of crane operators and welders where minority employment was 28 percent and 17 percent and black minority employment was 25 percent and 17 percent respectively would there have been a question. Since black minorities were underutilized in rig job classifications respondent is obligated to submit a satisfactory AAP.

Utilization of Females

Concerning the utilization and availability of women, 41 CFR 60–2.11(b)(2) sets out eight factors similar to those used to determine the

availability of minorities.[7] Respondent's AAP dated January 21, 1973, adopts adjusted population data concerning females. Specifically, this AAP indicated that the percentage of the female workforce in respondent's labor area as compared with the total workforce there is 31.65 percent and that the female unemployment force there is 446 (Resp. Exh. 75–H). These figures are rejected in favor of the unadjusted totals for this same area for the same reasons that similarly adjusted figures for minority groups were rejected. Accordingly, the size of the female workforce as compared with the total workforce in this area is 35.1 percent (Exh. 75–H) (Section 60–2.11(b)(2)(ii)), and the size of the female unemployment force in this area is 15,228 (Section 60–2.11(b)(2)(i)). Respondent presented no evidence in its AAP concerning the remaining six factors. The record shows however that respondent could reasonably be expected to recruit from this area and train women in order to make all job classifications available to them (Section 60–2.11(b)(2)(viii)).

The one woman employed as a roustabout at the date of this hearing was a yard roustabout (Tr. 904–905). Only a few women had been employed on rigs in the past. Their employment was short lived when they quit after a short time due to the working conditions on the rigs. Rig employees must work hard, sometimes in the mud while exposed to adverse weather conditions, and they are required to lift heavy equipment and supplies. Some of the female rig employees who were employed by respondent would have to ask the male employees for assistance thereby detracting from the overall efficiency of the rig crew. Nevertheless it has not been demonstrated that women are unsuitable for employment on rigs. The number of previous female rig employees is too small for a valid statistical sample. It is likely that out of the 252,728 total female labor force in the 22 relevant parishes with 15,228 of them unemployed a sufficient number of females big enough, strong enough, and with adequate endurance for rig work will be available for employment.

Respondent also presented evidence indicating that no females had responded to advertisements (Resp. Exhs. 45, 47, 48; Tr. 909–912) placed in newspapers in this area (Tr. 902, 906–907, 1913). This fact alone does not establish that there were available in this labor area no women seeking employment in these positions (60–2.11(b)(v)). Most of the hiring for the rig is done by the driller and rig superintendent who select the crew from persons in the area, preferably those with rig experience. Loffland sets no minority or female quota for the driller or rig superintendent to hire. They are merely instructed not to discriminate, therefore the guidelines for employment of minorities and women are inadequate. It has been demonstrated that some women are available even though the performance of those previously hired was unsatisfactory and they quit after a short time. It is likely however that as the concept of equal employment opportunity for women becomes a practice and as it becomes known that these positions are available to women, more women will begin to seek these positions. It is possible that the women previously employed would have continued to work on the rigs if they had been working in the company of other women in a rig crew with female representation commensurate with the percentage of females in the labor force of the area.

Respondent also presented unrefuted evidence that there were no women available in this area having requisite skills for upper level job classifications (Sections 60–2.11(b)(2)(iii) and (IV). Here again, as with minorities, respondent can by offering them opportunities for experience and training supply women the requisite skills for those positions.

Based on the provisions of the applicable regulations including the eight factors set out in 41 CFR 60–2.11(b)(2) the utilization analysis in respondent's AAP dated January 21, 1973, indicates that respondent had fewer women than would be expected by their availability in respoondent's labor area in all rig job groups. No improvement in the employment of women on rigs was indicated in any of the statistics submitted subsequent to the date of this AAP.

Since women are underutilized on all rig job groups in the Southern Division, respondent is obligated to submit a satisfactory AAP.

Minority Goals and Timetables

January 23, 1973 AAP

The Department of the Interior alleges that Loffland Brothers Company does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that Goals and timetables for increasing minority representation in various job classifications are unacceptable, under the requirements of 41 CFR 2.10 and 2.12(a) (d) and (g). Having determined that respondent's utilization analyses in the AAP dated January 23, 1973, indicated that respondent was deficient in the utilization of black minority groups and minorities generally, it is necessary to consider whether respondent included acceptable goals and timetables in this AAP or subsequently for increasing representation of these groups in various rig job classifications. 41 CFR 60–2.10 requires the contractor to adopt goals and timetables in order to correct deficiencies and to achieve prompt and full utilization of minorities and women at all levels and in all segments of its work force where deficiencies existed. Respondent's AAP states that respondent proposes to introduce all minority applicants to the drilling business by filling entry-level job vacancies. In the section of this AAP entitled "Identification of Problem Areas," respondent stated that its goal was to increase the percentage of minority personnel in the entry position of floorman and then to make available the training necessary for their promotion to the higher positions of motorman, derrickman, and driller (Govt. Exh. 1–A–2, p. 8). The section of this AAP entitled "Goals and Timetables" provides as follows:

Based upon a comprehensive investigation made by the company, the percentage of minority work force to majority work force in the labor area of the Division is 22.5 per cent. There are presently employed in the Division in entry level job classifications minorities equalling 18.01 per cent in entry jobs. Therefore, the goal for 1973 will be to increase the minority to majority ratio of entry level jobs to 19 per cent, and to further increase the ratio for the year 1974 to 20 per cent, and to further increase the ratio for the year 1975 to 21 per cent and to further increase the ratio for the year 1976 to 22 per cent and to further increase the ratio for the year 1977 to 23 per cent.

For the years 1973 to 1977, our goal will be to continue recruitment of qualified minority personnel for all job vacancies and classifications. Our further goal will be to fill such job vacancies with minorities in at least the same percentage as there are qualified people in the labor force of our labor area. At this time there does not exist a qualified minority labor force in our labor area for upper level job classifications. In the event we are able to achieve and maintain the entry level job goals, it is anticipated that some of these employees will progress to upper level job classifications. At this time, however, it is not possible to make any valid projection of this progression. During this period of time, we will continue to make re-evaluations of qualified minority labor force availability, and as definitive data is available, goals for upper level job classifications will be established.

Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform. No distinction will be made based upon sex in employment opportunities, wages, hours or other conditions of employment.

(Govt. Exh. 1–A–2, pp. 8–9; Tr 420–422).

These stated goals and timetables fall short of what is required by E.O. 11246 and the regulations. If an employer is, as respondent is here, underutilized in any job classifications at any level the regulations require it to state its policy concerning how to end this underutilization in the form of a specific goal and timetable for each such position. 41 CFR 60–2.10 provides that "[a]n acceptable affirmative action program must include * * * goals and timetables to which

---

[7] 41 CFR 60–2.11(b)(2) provides:

"(2) In determining whether women are being underutilized in any job group, the contractor will consider at least all of the following factors:

" '(i) The size of the female unemployment force in the labor area surrounding the facility;

" '(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

" '(iii) The general availability of women having requisite skills in the immediate labor area;

" '(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

" '(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

" '(vi) The availability of promotable and transferrable female employees within the contractor's organization;

" '(vii) The existence of training institutions capable of training persons in the requisite skills; and

" '(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.' "

the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist." Respondent's AAP does not include specific goals and timetables for correcting underutilization in the upper-level rig job classifications. Nor does respondent's AAP specifically analyze each of the factors listed in section 60–2.11 in lieu of establishing specific goals, as allowed in 41 CFR 60–2.12(j). Thus, respondent's AAP is not in compliance with the regulations.

The obligation to adopt a goal stating its policy of corrective action exists even if the underutilization is not the fault of the contractor, such as where, as respondent has shown here, there are no minorities presently available who have specific skills required to perform adequately a complicated job such as upper-level rig jobs. Although nothing in the regulations indicates and we do not find nor imply that a contractor is obligated to hire minorities who do not have necessary qualifications for positions, this does not alter the contractor's responsibility to adopt for each underutilized position a goal representing a commitment to strive to eventually end unequal utilization of minorities therein by training and promoting capable minority employees into these positions. Since respondent was required to adopt specific goals for upper-level classifications even though there were no minorities with requisite skills available for these positions, it was not enough that respondent indicated that it would establish goals for them if and when periodic re-evaluation of its community indicated that minorities with skills had become available.

The regulations do not specifically require a contractor to adopt a goal expressed in terms of percentage of its workforce in a particular job. However, a percentage goal is the best means to insure that an employer realizes its obligation to strive to achieve utilization representative of the minority population in its community. Respondent has argued that a percentage goal is invalid under the regulations because it is a quota. This argument is without merit. A goal, whether expressed as a percentage or not, is simply a statement that an employer will make every good faith effort to hire a representative number of minorities. A goal is a reasonable target, a commitment by a contractor to strive toward a percentage of minorities in a particular job. While the question of what action would be appropriate if this goal is not eventually met is not presented here, it would seem that such failure would be actionable only if the government demonstrated that it was caused by a lack of good faith effort by the contractor to achieve the goal. Valid defenses would presumably protect the contractor from sanctions for failing ultimately to meet this percentage. Finally, respondent's failure to adopt specific goals is not forgiven by the fact that it adopted a plan to fill underutilized positions with minorities. 41 CFR 60–2.10 provides that "effort, undirected by specific and meaningful procedures, is inadequate." Thus, respondent's efforts to end underutilization must be linked with a formally stated commitment to strive toward hiring minorities at a rate representative of minority representation in its community. Therefore, respondent's AAP dated January 23, 1973, does not contain adequate goals and timetables.

April 23, 1974 Goals and Timetables

At the conciliation meeting on April 23, 1974 (Govt. Exh. 1–B–2–8), respondent presented to OEO proposed goals and timetables for several of the rig positions in the Southern Division which were in dispute (Govt. Exh. 1–B–2, Exh. A, Resp. Exhs. 75 D–G). The proposed goal for each job classification was 22.5 percent minority representation. The approximate timetables for these job classifications are as follows:

Floormen, 11 years (Resp. Exh. 75–L).
Motormen-derrickmen, 15 years (Resp. Exh. 75–K).
Drillers, 28 years (Resp. Exh. 75–J).
Rig Superintendents, 32 years (Resp. Exh. 75–I).

Respondent also presented information at this meeting concerning the length of time taken by incumbent employees to reach these positions. (Govt. Exh. 1–B–2–x–A; Resp. Exhs. 75–A–75–C; Tr. 1061–1062). Some of the information was presented in the form of charts and curves and the following approximations are taken from this information:

	50% of incumbents	60% of incumbents	100% of incumbents
Motormen-derrickmen.	1.3 Years	2 years	7 years
Drillers	10 years	12 years	19 years
Rig Superintendents.	3.5 years	15 years	25 years

Goals and timetables naturally work together. A goal is meaningless in terms of ending discrimination unless it is put into a time frame. The purpose of the timetable is to take into account the difficulty of achieving a goal, such as where, as respondent alleges here, there is presently an absence of minorities with requisite skills. Allowing a contractor to state timetables for reaching goals allows respondent to demonstrate how long it will take to overcome any underlying problems beyond its control which caused a present underutilization of minorities or women. If a contractor presents reasonable timetables, OEO must accept them, in order to give it the time it needs to achieve full utilization without its having to sacrifice quality in the performance of work by its employees by forcing it to hire unqualified employees. However, a contractor may not adopt timetables which unreasonably delay the entry of minorities and women into all job classifications or which demonstrate less than good faith effort to end underutilization.

41 CFR 60–2.12(a) provides that "* * * in establishing * * * the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work." The regulations require a company to adopt a timetable stating the minimum feasible time in which it can meet its goal. The timetables presented at the conciliation meeting on April 23, 1974, do not meet the requirements of this section. The record indicates that these timetables stated that respondent would employ 22.5 percent minorities in certain jobs within a period of time longer than the time period taken by 100 percent of its incumbent nonminority employees in these jobs. For example, respondent's witness testified that it might take from 7 to 9 years to become a driller (Tr. 981–982), and respondent's chart indicates that it would take a maximum of 19 years (Resp. Exh. 75–B). However, respondent's timetable for achieving a representative percentage of minorities in this position is 28 years (Govt. Exh. 75–J). The justification for these timetables offered by respondent at the hearing is not persuasive. Respondent argues that minority employees will leave the entry-level positions before gaining enough experience to be promoted to upper-level positions (Tr. 1094–1095). However, incumbents who reached upper-level positions were also subject to turnover, and respondent's evidence indicates that they were able to progress at a rate faster than that adopted by respondent in its minority timetables (Resp. Exhs. 75–A—75–C). There is no evidence that these incumbents were exceptionally capable or that were in any way able to advance faster than would normally be expected. Although it should be noted that the incumbents progression statistics were generated by promotion from entry level positions already filled by the incumbents the record indicates that minorities are amply available in respondent's labor area for entry-level positions and there is no indication whatever that minorities would require longer to be trained for upper-level positions (Tr. 1094, 1095). An accelerated timetable would demonstrate that respondent intended to make a good faith effort to make up for past underutilization of minorities by affording minority employees opportunities for job experience and increased training in order to provide them with requisite skills as soon as possible.

The record indicates that, after a long period of depression, the drilling industry is expanding (Resp. Exh. 44; Tr. 890–892). Mr. Henry Hecker, respondent's Southern Division manager, testified that he expected to add two new rigs to the Southern Division before the end of 1976 (Tr. 1375). This expansion should have created new job opportunities for which respondent could train minority employees (Tr. 1228). Since new positions will be available, respondent will have available new opportunities for employees with less job experience (in terms of years) than in the past, although it is recognized that employees may be in greater demand throughout the drilling industry. Thus, the average time required to reach an upper level position will be likely to decrease, not increase, as respondent's timetables would seem to suggest. Since there is no evidence that it will take longer for an employee to reach an upper level job in the

coming years, respondent's proposal to utilize minority employees in a representative percentage only after a period of time longer than that taken by non-minority employees discriminates against minorities.

Respondent's AAP which proposes to make available to minorities upper level job opportunities at a rate slower than the rate at which non-minorities reached those positions is also deficient in that the goal set for minority employment is too low. 22.5 percent minority employment in an area where the minority work force is 178,645 or 24.8 percent of the total work force with 15,237 unemployed is inadequate. Accordingly, respondent's goals and timetables submitted at the conciliation meeting on April 23, 1974, are unacceptable. Exhibits entered into evidence at the hearing that might be considered an amended AAP (Exh. R–80) are unacceptable as an AAP for the same reasons the April 23, 1974 goals and timetables are unacceptable.

OEO offered into evidence at the hearing a document entitled "Comparison of Goals and Timetables of Other Drilling Companies in the Gulf Coast Area" (Govt. Exh. 1–B–1; Tr. 33), and a second untitled comparison (Govt. Exh. 2; Tr. 77–78). These documents set out, respectively, goals and timetables adopted by 19 and 21 drilling contractors (Tr. 34–36) during the periods from May 1972 to February 1974 (Tr. 33–34, 36–37) and from July to September 1975 (Tr. 78). OEO failed to establish that the minority representations in each drilling contractor's specific labor area was similar to respondent's. OEO witness admitted that several of these contractors were located in substantially different labor areas (Tr. 42–44, 163–4), and that some of these AAPs were filed up to 13 months later than respondent's (Tr. 165). Absent an evidentiary foundation showing that characteristics of the labor areas of each contractor mentioned in these summaries are substantially similar to respondent's, the goals and timetables of these contractors are inapplicable to a determination as to whether or not respondent's goals and timetables are acceptable, and accordingly this evidence was not used in the formulation of findings on this issue. For the same reason the comparisons are irrelevant to the issue of whether OEO's refusal to accept Loffland's Goals and Timetables was discriminatory. It is therefore unnecessary to resolve the questions raised by evidence presented by respondent indicating that the companies did not in fact adopt some of the goals and timetables listed in the comparisons (Resp. Exh. 65; Tr. 1018–1024).

Goals and Timetables for Female Employees

The Department of Interior alleges that Loffland does not maintain an acceptable AAP in that it does not include specific goals and timetables for women (41 CFR 60–2.12(a) and (h)). As respondent's witness explains "this is because women have not applied for those jobs (rig positions), and therefore, we (Loffland) are not underutilized according to the regulations, and therefore, we are not required to establish goals and timetables under those circumstances" (Schultz, Tr. 1240). As discussed, supra, under the part of this decision dealing with the utilization of women respondent's AAP utilization analysis shows and it has already found that respondent is deficient in its utilization of women in all rig positions. Accordingly, respondent's AAP does not include the required specific goals and timetables for women.

Applicant Statistics

The Department of the Interior alleges that Loffland Brothers Comany does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that applicant statistics which meet the requirements of the regulations are not being maintained (41 CFR 2.12(1)).

During the compliance meeting with respondent on November 8, 1972, OEO indicated to respondent that it was not in compliance with the requirement stated in 41 CFR 60–2.12(1) in that it had failed to maintain a roster of applicants for employment positions in respondent's Southern Division. 41 CFR 60–2.12(1) provides as follows:

"(1) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status."

Respondent, pursuant to OEO's request at the meeting on November 8, 1972, began compiling a roster of all applicants for employment in its Southern Division as of January 1, 1973 (Govt. Exh. 44; Resp. Exh. 56; Tr. 950–953, 1273–1274). Mr. H. Jack Bluestein, Asssistant Director of OEO's Contract Compliance Division, testified at the hearing that respondent has kept an adequate applicant roster and flow chart and this evidence has not been rebutted (Tr. 1601–1602). Respondent therefore has since January 1, 1973, kept applicant data which satisfies the requirements of the regulations.

Training and Promotion Programs

The Department of the Interior alleges that Loffland Brothers Company does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that training and promotion programs for possible upgrading of minorities were not covered in the Affirmative Action Plan (41 CFR 60–2.11(b) (1) and (2)).

The AAP filed by respondent with OEO on January 26, 1973, states that "Loffland provides to every employee, on a non-discriminatory basis, the opportunity to participate in a variety of job-oriented training programs designed to improve the individual through increased job knowledge. * * * Policies, procedures, and pratices governing employment, training, upgrading and promotion of minorities are being reviewed and should any deficiencies be discovered, immediate action will be taken for correction. * * * [O]ur goal is to increase the percentage of minority race personnel in the entry position of floorman and to make available the training necessary for promotion to motorman or derrickman and to driller. When a minority applicant or employee is qualified for any of the rig crew positions, he will be considered without regard to race, creed, color, age, sex, or national origin" (Govt. Exh. 1–A–2–8). These statements are the only reference in this AAP to respondent's proposed plan to offer minorities training to supply them with the requisite skills for upper-level rig jobs.

The regulations state that a contractor should in its utilization analysis, consider the degree of training which it is reasonably able to undertake as a means of making all job classes available to minorities (41 CFR 60–2.11(b)(1)(viii)) and to women (41 CFR 60–2.11(b)(2)(viii)). They do not specifically require a contractor to describe in its AAP the exact nature of promotion programs for the upgrading of minorities. However, in view of the reliance placed by respondent on training minorities in entry-level positions as its means of filing upper-level positions, it is essential for OEO to be able to review respondent's proposal regarding how to provide the training which will give to minority employees the skills required for these positions. Requiring respondent to state in particular detail its plans regarding how to supply this training is consistent with the operation of E.O. 11246 and these regulations, which depends on oversight of the contractor's affirmative action program by the compliance agency.

Respondent's AAP fails to set out in adequate detail how it proposes to make available the training necessary for promotion to upper-level positions. Although respondent demonstrated at the hearing that it has ample training programs, it must nevertheless state them in its AAP since the regulations state that "effort, undirected by specific and meaningful procedures, is inadequate" (41 CFR 60–2.10)).

Respondent's AAP does not on its face contemplate providing minorities with the training to advance beyond the level of driller. The regulations are clear that deficiencies in all levels must be addressed by the contractor in its AAP. Respondent's failure to consider the training required to allow minorities to become rig superintendents is therefore in violation of these regulations. Similarly respondent's failure to consider the amount of training required for women to achieve rig positions is in violation of these regulations.

Respondent's proposed plan to achieve representative utilization of minorities and women in upper-level rig positions is by hiring minorities into entry-level positions and then by offering training to advance them. Respondent also has an obligation to recruit and hire minorities and women who already have requisite skills, should they become available. As employment opportunity in the drilling industry becomes available to minorities, minority individuals will gain the experience required for upper-level positions, not only through experience with respondent, but through their experience with other drilling companies.

Educational Standards in Advancement Programs

The Department of the Interior alleges that Loffland Brothers Company does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that the company is using educational standards in certain advancement programs which are causing an adverse effect upon the entrance and advancement of minorities. (41 CFR 60–3.13; 41 CFR 60–2.23(a)(3); 41 CFR 60–224(b); 41 CFR 60–3.3; 41 CFR 60–3.2).

The record indicates that respondent does not require that applicants for employment in its Southern Division have high school diplomas or other evidence of formal education to enter into employment (Tr. 938), and that respondent does not require that employees have high school diplomas or other evidence of formal education to be promoted into higher jobs in the Southern Division (Tr. 936–937). OEO has presented no evidence to the contrary. Although respondent does not use educational standards in determining whether an applicant should be hired or an employee should be promoted the issue remains as to whether respondent uses educational standards in any other programs and whether these standards have any adverse discriminatory effects upon the abilities of minorities to enter or advance in employment with respondent or upon the employment rights of minorities generally.

Respondent has developed a program called Operation Go-Lite (Govt. Exh. 1–b–5; Tr. 61) which offers a course of study to all of respondent's rig employees to acquaint them with the theoretical technical aspects, as opposed to the simple mechanical aspects of the operation of drilling rigs (Tr. 401–402, 935–936). Subjects dealt with in this program include drilling bits, drill collars, drill pipes, tool joints, engines, hydraulics, mud engineering, and blowout prevention (tr. 935–936). Testing on course material is given orally to students who cannot read or write (Tr. 402). Go-Lite offers employees merit wage increases within their present job classification on the basis of a credit system recognizing the employees who have taken and completed these courses (Tr. 401–403, 935–936, 1005, 1252–1253). The program also gives credit toward merit wage increases for an employee's having received a high school diploma or GED diploma within 3 years of participating in training courses (Tr. 940, 1254), and for an employee's having had fewer than two garnishments against his wages (Tr. 948).

OEO has alleged that Operation Go-Lite is causing an adverse effect upon the entrance and advancement of minorities in that it offers entrance to applicants and advancement (promotions) and wage increases to employees holding high school or GED diplomas (Tr. 61, 219–220, 320), and in that it denies these benefits to employees having more than two wage garnishments (tr. 519). The bases for these allegations are that minorities do not hold high school diplomas in as great a percentage as do nonminorities, and that offering entrance, advancements, or merit wage increases to holders of these diplomas would screen out minorities from receiving these benefits (Tr. 219–220); and similarly that the extension of these benefits only to those employees with less than two wage garnishments would also screen out minorities from receiving these benefits, since minorities are subject to wage garnishments more than nonminorities (Tr. 519). OEO alleges that application of Go-Lite's high school diploma and garnishment provisions affect minorities and nonminorities disparately, to the detriment of the minorities.

The Supreme Court held in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971) that neutral employment practices can violate Title VII, *supra*, regardless of the employer's motivation, if the policies have a discriminatory impact on minority employees. The record indicates that OEO has failed completely to demonstrate, by statistics or otherwise, that any aspect of Operation Go-Lite has a discriminatory impact on minority applicants or employees, or that respondent uses any other educational standards in advancement programs which are causing an adverse effect upon the entrance and advancement of minorities.

Operation Go-Lite is not an advancement program (Tr. 1252–1253). There is no requirement that an employee has participated in Go-Lite to advance to a higher-level rig position. Thus, the question of whether an employee meets any Go-Lite standard is immaterial to the issue of whether he advances. Respondent has an entirely different set of standards for determining when an employee should advance, based on that employee's demonstrated ability and job knowledge (Tr. 1420, 1450–1451). Previous garnishments of wages do not affect either hiring or retention of employees (Tr. 1256). Participation by an employee in Operation Go-lite and satisfaction of its terms may result in no more than a merit wage increase within a particular job and will not help or hinder advancement to upper-level positions (Tr. 1252–1253). Similarly, whether or not an applicant meets Operation Go-Lite's standards in no way affects employment opportunity. Since whether an applicant or employee meets the standards of Operation Go-Lite is entirely irrelevant to whether they are employed or promoted, the standards in Operation Go-Lite can accordingly have no adverse effect on the entry into employment or the advancement in employment of minorities.

The issue remains as to whether the standards in Operation Go-Lite result in the unequal distribution of in-job merit wage increases to nonminorities rather than minorities which is also proscribed by the regulations. 41 CFR 60–1.4(a) provides in part that the contractor will take affirmative action to ensure applicants are employed and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: "* * * rates of pay or other forms of compensation." OEO contends that the standards used in Operation Go-Lite to determine which employees will receive credit toward merit wage increases favor nonminorities. This contention is based on the premises that awarding credits to employees holding high school or GED diplomas will discriminate against minorities because fewer minorities hold these diplomas (Tr. 219–220), and that awarding credits to employees with no past record of wage garnishments will discriminate against minorities because fewer minorities than nonminorities have no past record of wage garnishment. OEO presented no evidence, statistical or otherwise, indicating either that in respondent's Southern Division fewer minorities than nonminorities hold high school or GED diplomas, or that fewer minorities than nonminorities have no past record of wage garnishment there. The record indicates to the contrary that the percentage of minorities holding high school diplomas in respondent's Southern Division is virtually identical to that of nonminorities holding them there (Resp. Exh. 54; Tr. 939) and no garnishments of record were found among Southern Division employees (Tr. 1255). It should be noted here that the subject under consideration is extra pay for persons already employed by Loffland; not whether persons from the general labor force will be employed in the future.

Even assuming that OEO had presented reliable statistical evidence or other evidence demonstrating that Operation Go-Lite's diploma and garnishment standards had a discriminatory effect, such effect would be minimal. As discussed above, holding a high school diploma is not a requirement for employment or advancement, as it was in the *Griggs* case, *supra*. Holding a high school diploma does not automatically entitle an employee to increased wages, but only to credit toward a merit increase. Holding a high school or GED diploma only benefits an employee under Operation Go-Lite if he has received it within 3 years of participation in the program. Thus, very few employees are affected by this standard. Since it is possible in Operation Go-Lite to gain equal credit by completing a GED equivalency diploma, even if minorities were known to hold diplomas less often than nonminorities, a minority employee can receive equal benefits from this standard. In fact, if minorities were known to have diplomas less often than nonminorities, they could arguably benefit more from the diploma standard in Go-Lite, since they would receive their dipomas or GED equivalency within the 3-year cutoff period imposed by its terms, while most nonminorities holding diplomas would probably fall outside of this period.

Therefore respondent has not used educational standards in any way which causes an adverse effect upon the entrance or advancement of minorities in employment in the Southern Division. The standards for merit increases in Operation Go-Lite do not operate disparately to exclude minorities from receiving merit wage increases.

Pre-employment Screening Process

The Department of the Interior alleges that Loffland Brothers Company does not maintain an acceptable Affirmative Action Program as required by 41 CFR 60–2 in that the pre-employment screening process is

having an adverse effect on minorities and women. (41 CFR 60–3.13; 41 CFR 60–2.24(d).)

This allegation pertains to the employment application form used by respondent which asks questions of the applicant concerning height and weight, color of hair and eyes, marital status, names and ages of spouse and children, and country of citizenship (Resp. Exh. 59; Tr. 523–527, 958). OEO presented no evidence whatsoever to demonstrate that respondent's requesting this data on its application forms had any discriminatory effect. There is no legal presumption that this effect would result. In any event, respondent has pointed out that it would be unable to assemble data concerning the race and sex of applicants for its applicant roster, the development of which is required by OEO and is also in dispute here (Tr. 1257–1258). This is a valid reason for seeking this information. OEO alleges that respondent's failure to maintain an applicant roster stating the race and sex of all applicants for employment is improper while at the same time alleging that respondent's asking this information of its applicants on its application is discriminatory. Respondent's president, Mr. Schultz, also testified that this information is necessary for identification purposes and is important in applications for foreign employment (Tr. 1257–1259). Mr. Schultz also suggests that if respondent's purpose was to discriminate, the applicant's name is as revealing as the personal data objected to here by the Department of the Interior (Tr. 988). Respondent's pre-employment screening process is not discriminatory on account of respondent's seeking information on its application form which might suggest the race and sex of the applicant. It is probable that Loffland, without information as to the race of the applicant, would have been unable to recently hire enough minorities so that now 63 percent of all roustabouts in the Southern Division are minorities. Information as to race and sex is vital to the formuation of an acceptable affirmative action program. Of course, whether this information is in an applicant roster or in an application for employment it must not be used in a discriminatory manner.

Segregated Facilities

The issue as to whether respondent discriminated by clustering black employees on some rigs rather than distributing them throughout all of its rigs also arose (Tr. 435, 451). As authority for its asserting that this was discriminatory the Western Regional Office of OEO cited 41 CFR 60–1.8 which provides as follows:

"§ *60–1.8 Segregated facilities.*

"(a) *General.* In order to comply with his obligations, under the equal opportunity clause, a prime contractor or subcontractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. He may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. His obligation extends further to ensuring that his employees are not assigned to perform their services at any location, under his control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants or other eating areas, time clocks, restrooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees."

Assuming that clustering of minorities on cetain rigs is prohibited by this regulation or by the general terms of EO 11246 there is nothing in the record to indicate that respondent has used segregated "facilities," to discriminate against minorities or women. Respondent offered a valid explanation for the grouping of black employees at certain rig sites. Rig crews work as teams, and, since black and minority rig employees have all been hired recently as new employment opportunities arose, it was more practical to put them together to form crews for new rigs than to break up existing crews. Even if the regulation cited applies to respondent's rigs, respondent has advanced a legitimate nondicriminatory reason for its "clustering" black employees on certain rigs.

Sanctions

Respondent's utilization analyses indicate that respondent has been and continues to be underutilized in several rig job classifications in that there are deficiencies in these classifications in the utilization of minorities and women. Respondent's goals and timetables for increasing minority representation in various job classifications are unacceptable under the regulations, and its AAP does not include specific goals and timetables for women. 41 CFR 60–2.2(a)(1) provides that until a contractor develops an AAP which is found to be acceptable and in accordance with the standards and guidelines set forth in 41 CFR 60–2.10 through 60–2.32, the contractor is unable to comply with the employment opportunity clause. Accordingly, respondent has not complied with the equal employment opportunity clause, and is subject to the sanctions for noncompliance set out in §§ 209(a)(5) and (6) of E.O. 11246.

Nevertheless, there are mitigating circumstances, including good faith on the part of the respondent, to suggest that in this proceeding the sanctions imposed should be conditional. In fact, despite allegations of lack of good faith in prehearing statements and post hearing briefs both the petitioner and the respondent demonstrated good faith at the hearing and in their negotiations concerning the affirmative action program. It is evident that the controversy arose due to bona fide differences of opinion as to the requirements of the executive order and the regulations.

Under the regulations, a contractor is not obligated to adopt goals and timetables if it is not underutilized, however, a contractor is excused from filing goals and timetables only if it offers instead in its AAP a convincing analysis detailing its justification for not submitting goals and timetables. Respondent's AAP dated January 21, 1973, failed to show that it was in fact not underutilized. To the contrary, the utilization analysis indicates that repondent was underutilized. Since respondent was underutilized, it was therefore required to submit in this AAP goals and timetables, and its failure to do so consititutes noncompliance. However, in view of respondent's reliance on its belief that it was not underutilized while preparing its AAP, the failure to submit goals and timetables in this AAP was not due to a lack of good faith. Although the regulations do not require that noncompliance be intentional, good faith of the contractor may be considered in determining the appropriate sanction.

On March 15, 1974, OEO notified respondent that it considered that the utilization analysis in the AAP dated January 21, 1973, showed that respondent was underutilized in certain rig jobs as to both minorities and women, and that respondent was therefore required to submit goals and timetables for these jobs. Respondent acted on April 23, 1974, to supply OEO with goals and timetables for minorities, the acceptability of which has since that time been in issue. Although it has been found herein that these goals and timetables are unacceptable and that respondent is therefore not in compliance, respondent's failure to submit acceptable goals and timetables was not intentional. It believed that it was submitting acceptable goals and timetables. Since respondent submitted what it mistakenly believed to be acceptable goals and timetables, its failure to comply was not due to a lack of good faith.

The record reveals that respondent's early failures to increase minority representation were at least in part because of a severe depression in the drilling industry, which ended only in 1970 (Resp. Exh. 44; Tr. 890–892). This depression greatly reduced the job opportunities available in the drilling industry. During this period, respondent elected to hire experienced personnel only, which limited opportunities for minorities, since very few had this type of rig experience. Even after the depression ended and employment opportunities in the drilling industry increased, there were for 2 years many experienced drilling employees looking for work, and respondent elected to hire them (Tr. 1229).

Respondent introduced evidence to show that throughout the depression in the drilling industry and shortly thereafter, minorities did not apply for rig positions (Tr. 1229, 1234). Although no applicant roster for this period of time recording the race of the applicant was available to verify this testimony, it has

not been impeached. Respondent made reasonable efforts to recruit minority applications for rig positions, starting in 1970 (Resp. Exh. 90; Tr. 1370). Subsequently, it has attempted to encourage minority applications by advertisements, stating as required by the regulations that it is an equal opportunity employer (Resp. Exhs., 45–47; Tr. 1241–1243), by contacting private employment services (Tr. 1422), by contacting the NAACP (Tr. 1421–1423), and by attempting to spread notice of opportunities by word of mouth (Tr. 1371, 1421–1423). Nevertheless, there has been in the past a scarcity of minority applicants for rig positions (Tr. 1070–1071, 1229–1234). Respondent's applicant roster indicates that the number of minority applicants has increased from 223 in 1973 to 352 in 1975 (Resp. Exh. 84; Tr. 1391–1397). The record indicates that there has been an extreme shortage of black applicants for upper-level positions (Tr. 1275–1276). Respondent's applicant roster reveals that from January 1, 1973, less than 60 blacks applied for upper-level positions, and that only one black applied for the rig superintendent position (Tr. 1275–1276). Not all of these applicants had the requisite skills to perform the positions for which they applied (Tr. 1257).

Respondent has not simply accepted this situation, but has made a good faith effort to aid those minorities who do apply by adopting a policy of recalling minority applicants who are turned away because of lack of openings when openings subsequently occur (Tr. 1071, 1366–1368, 1382). This practice usually is effective only if the applicant can be recalled within 1 week of original application (Tr. 1382). Respondent has also adopted the policy of not rejecting any minority applicant if there is an opening for which he or she is qualified (Tr. 1379).

As further evidence of respondent's good faith efforts to end underutilization of minorities in its Southern Division, respondent offered into evidence a letter (Resp. Exh. 89; Tr. 1422) dated July 30, 1975, from the Louisiana Department Security to Mr. Provost Minvielle, personnel director for its Southern Division with the following text:

"A review of our orders from you for the past fiscal year ending June 30, 1975, reveals that your company has assisted us in placing many of the economically disadvantaged persons in our area. Of the total number of hires there were 56% veteran hires, of which 53% were minority. The remaining non-veteran hires consisted of 40% minority.

"This office appreciates the manner in which our company has strived to hire minority groups and we will continue to assist in any way possible to achieve your desired results as an equal opportunity employer."

There is a shortage of minority individuals with requisite skills to perform upper-level rig positions. It is essential to the safe operation of a drilling rig to have experienced and trained personnel in these positions (Tr. 981, 1206). All of respondent's upper-level employees have in fact started at the entry-level positions and worked their way up as they developed job experience (Tr. 1378, 1484). The fact that there is a shortage of minorities with adequate experience to qualify them for these positions necessarily indicates that respondent by hiring minorities into these positions would be hiring inexperienced personnel. The resulting decrease in safety and efficiency would be a result only of the lack of experience and training of the minority employee, and not because of any inherent inability. By recently hiring a large number of minorities in entry level positions and offering them opportunities for experience in rigs, training, and advancement respondent has done much that should tend to alleviate this situation.

It is apparent that a present lack of experience in minority employees may be cured only by offering minorities full opportunity to gain this experience. The ability to perform higher level jobs comes, not from independent qualifications, but rather from the company training program (Tr. 523). The record reveals that respondent has made a good faith effort to provide minority employees with experience as quickly as possible so that they may be promoted rapidly into upper-level positions. Respondent has put into effect a plan whereby minorities are hired at better than representative percentages into entry-level positions (Tr. 1234). Training is then made available to them, as it is made available to all employees (Tr. 928, 930, 1236). Training and safety manuals for all jobs are made available for study by employees (Tr. 927, 1234–1236, 1248). Additionally, employees are given on-the-job instruction in how to perform rig functions (Tr. 1249). Respondent has a training device which simulates "blowouts," the major safety problem which must be dealt with on rigs (Tr. 929–930). Respondent encourages individual employees to learn the technical aspects of their jobs by offering them financial bonuses in Operation Go-Lite (Govt. Exh. 1–B–5; Tr. 401–403, 935–936, 1252–1253), and to advance to higher rig positions or other positions in respondent's structure (Tr. 930–932). The mastery of written material is not a requirement for promotions (Tr. 1420, 1450–1451).

Respondent's failure to adopt goals and timetables for women or the break-through goal for women (which was not defined or clarified in the record) suggested by OEO was similarly not due to a lack of good faith. Repondent did not submit specific goals and timetables for women because it believed it was not underutilized under the terms of the regulations and was therefore relieved of this obligation (Tr. 1240).

Women do not customarily apply for rig positions (Tr. 1418–1419). Respondent has attempted to encourage female applicants for rig positions by advertisements, stating as required by the regulations that it is an equal opportunity employer "male-female" (Resp. Exhs. 45, 47; Tr. 906, 1241–1242), and by contacting state and private employment agencies (Tr. 1241). No female applied for a rig job in response to an extensive newspaper advertisement campaign at the end of 1974, although between 400 and 500 applications for rig positions were received from males (Tr. 906–907, 913, 1237–1238). Of the seven women who did apply for and accept rig positions, all voluntarily left these positions in an average period of 22 days (Tr. 984–985). They left these positions because they felt the work was too hard and because they did not like muddy conditions at the rigs (Tr. 1239). The women rig employees who were previously employed by respondent experienced difficulty in the performance of some of their duties without help from male rig workers (Tr. 1353).

Nevertheless, despited the recent efforts of Loffland, underutilization of women and underutilization of black minorities in all rig positions except that of roustabout still persist and Loffland has failed to file an acceptable AAP. It is therefore recommended that an order be issued (1) to cancel all of Loffland's Government contracts and Government subcontracts conditioned upon a program for future compliance approved by the Department of the Interior and (2) to provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts with Loffland, until Loffland has satisfied the Department of the Interior that it has established and will carry out personnel and employment policies in compliance with the provisions of Executive Order 11246.

Since a considerable amount of time may be required for the parties to negotiate an acceptable AAP under the circumstances of this case it would be appropriate that the order of cancellation and debarment be further conditioned upon an immediate undertaking of an alternative program by Loffland to eliminate underutilization of black minorities and women. This additional program would not be in lieu of an acceptable AAP but would serve to postpone the effects of the order of cancellation and debarment until such time as an acceptable AAP can be formulated. The alternative procedure would be in addition to the APPs already filed by Loffland and should consist of a program in writing in which Loffland agrees to *employ* and *promote* women and black minorities in a specific ratio to the other employees in rig positions. Testimony adduced by the petitioner suggests a one-for-one *hiring* ratio of black minorities to non-minorities in entry level positions (Bierman, Tr. 212) and a one-for-one *hiring* ration imposed by a court has been upheld by the United States Court of Appeals, First Circuit, in *Morgan* v. *Kerrigan*, 530 F.2d 431 (1976).

Since the proposed alternative program is only a temporary additional undertaking to insure that progress in the untilization of black minorities and women continues while an acceptable AAP is being formulated, the one-for-one employment and promotion ration should be extended to the *hiring* and *promotion* of women as well as to black minorities in all rig positions. While the resulting rate of hiring and promotion of women and black minorities might exceed that in an acceptable AAP there must remain some incentive short of outright cancellation and debarment to induce Loffland to submit an acceptable AAP. This should not be unduly burdensome to Loffland since if a qualified black minority or female is not in fact available for the position Loffland is consequently not obligated to adhere to the one-for-one hiring and promotion ratio for

this specific personnel action. The Administrative Procedure Act at 5 U.S.C. 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." It is the intent of this decision that the Government will bear the burden of proof in any administrative action invoking the order of cancellation and debarment for failure to comply with the requirements of the additional alternative program providing that (1) an applicant roster and relevant personnel records are maintained and (2) made available to the Department of the Interior. This distinguishes such a program from a proscribed quota where respondent would be obligated to meet or bear the burden of proving adequate reasons for any good failure to meet its quota. This safeguard is necessary since it can not be presumed that all applicants for rig positions, especially the upper-level positions, will be fully qualified.

Since it is possible that the one-for-one hiring ratio may adequately fill some of the rig positions with black minorities and women before an acceptable AAP is formulated, cut-off points in the form of percentages should be adopted. These percentages should, for the purposes of the alternative additional program, be the percentage of black minorities and females in the work force of Loffland's area of recruitment and employment in the 22 parishes of Louisiana.

Based on the unadjusted census figures adopted herein, the total black minority workforce is approximately 178,645 or 24.8 percent of the total labor force in the 22 parish area. The female workforce, based on the unadjusted census figures adopted herein, is 252,728 or 35.1 percent of the total workforce (Resp. Exh. 75–H). While the percentages of minorities and women under the recommended additional alternative program may differ from the percentages obtained by the application of all of the factors which must be considered under the terms of 41 CFR 60–2.11(b)(1) and (2), they are the most reasonable figures under all of the circumstances of this particular case which are readily available for adoption as an interim measure. This does not necessarily imply that these are the proper percentages to be used in an acceptable AAP where the percentages derived by application of the factors prescribed by the regulations must be used.

The effect of the recommended order of cancellation and debarment may therefore be postponed either by the submission of an acceptable AAP or an alternative additional program containing the elements set forth above.

5 U.S.C. 556 provides that a sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. This case has been decided on consideration of the whole record. Many of the numerous citations to the record in this decision are those of the Administrative Law Judge which, due to the voluminous record, were included to facilitate review by the Department of the Interior and the Department of Labor and do not necessarily indicate that only the parts of the record cited have been considered. The citations in the decision go beyond the citations in the posthearing briefs because it was necessary to consider the entire record to properly resolve the issues.

Both petitioner and respondent submitted briefs. Such briefs, insofar as they can be considered to have contained proposed findings of fact and conclusions of law, have been considered fully and carefully. Except to the extent that they have been expressly or impliedly affirmed in this recommended decision, they are rejected on the ground that they are, in whole or in part, contrary to the facts and law or because they are immaterial to the decision in this case.

Issued: April 21, 1977.

Forrest E. Stewart,
Administrative Law Judge.

Distribution:
R. Robert Huff, Attorney for Loffland Brothers Company, Huff and Huff, Inc., 604 Philtower Building, Tulsa, Oklahoma 74103 (Certified Mail)
Henry J. Strand, Regional Solicitor's Office, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225 (Certified Mail)
Standard Distribution

Table III (Attachment) (Govt. Exh. 1–B–s; Tr. 50)

OEO offered into evidence the following information concerning respondent's history of utilization of minorities by respondent throughout all of its divisions in all job classifications:

All Divisions: Minority Representation in All Positions

Year	Employment Total	Total Min.	%	Black Min.	%	Spanish-surnamed Min.	%	Other	%
1964	803	3	.4	1	.1	0	.....	2	.3
1965	904	2	.2	1	.1	0	.....	1	.1
1966	1,128	22	2.0	1	.1	14	1.3	7	.6
1967	1,168	62	5.3	2	.2	43	3.7	17	1.5
1968	893	44	4.9	2	.2	17	1.9	25	2.8
1969	876	57	6.5	6	.7	12	1.4	38	4.3
1970	1,142	50	4.4	9	.8	14	1.2	27	2.4
1971	1,143	69	6.0	17	1.5	19	1.7	33	2.9
1972	1,460	67	4.6	30	2.1	15	1.0	22	1.5
1973	1,576	106	6.7	33	2.1	49	3.1	24	1.5

[17]3038B

Table IV (Attachment) (Govt. Exh. 1–B–2; Tr. 50)

OEO offered into evidence the following information concerning respondent's history of utilization of minorities by respondent in its Southern Division in all job classifications:

Southern Division: Minority Representation in All Positions

Year	Employment Total	Total Min.	%	Black Min.	%	Spanish-surnamed Min.	%	Other	%
1966	250	1	.4	1	.4	.....	.....	.....	.....
1967	205	1	.5	1	.5	.....	.....	.....	.....
1968	.....	.....	.....	.....	.....	.....	.....	.....	.....
1969	264	12	4.6	5	1.9	3	1.1	4	1.5
1970	404	14	3.5	6	1.5	3	.7	5	1.2
1971	533	28	5.3	15	2.8	6	1.1	7	1.3
1972	373	27	7.2	19	5.1	2	.5	6	1.6

OEO presented evidence indicating that in April 1970, seven (1.7 percent) females and in September 1971 four (1.3 percent) females were utilized by respondent in its Southern Division (Govt. Exh. 1–A–1, p. 2). EEO's information was taken from government files and from statements made by respondent at conciliation meetings and in its AAP and EEO–1 reports (Govt. Exhs. 30–32; Tr. 50–51, 365).

Table V (Attachment)

Respondent offered into evidence the following data concerning its history of utilization of minorities in its Southern Division:

Southern Division: Minority representation in all positions.

Year	Percent min. employees	Percent black employees
1970	3.5	1.5
1971	5.2	2.6
1972	7.2	5.1
1973	9.5	4.9
1974	11.2	7.5
1975	15.4	12.0
1976	20.4	15.6

(Resp. Exh. 90; Tr. 1423).

Table VI (Attachment)

Respondent offered into evidence the following data concerning its minority and black representation on December 31, 1975, and April 1, 1976:

Southern Division: Minority and black representation.

December 15, 1975:		
456 total employees	93 minority employees	20%
	71 black employees	15%
324 rig* employees.	84 minority rig employees	26%
	55 black rig employees	17%
187 rig-el** employees.	58 rig-el minority employees	31%
	53 black rig-el employees	28%

(Resp. Exh. 85; Tr. 1397–1400).

April 1, 1976:		
454 total employees	114 minority employees	25%
	77 black employees	17%
388 rig* employees.	94 minority rig employees	24%
	61 black rig employees	16%
185 rig-el** employees.	68 rig-el minority employees	37%
	49 black rig-el employees	26%

* Rig employees: rig superintendent, driller, assistant driller, derrickman, motorman, electrician, welder, crane operator, floorman, roustabout.

** Rig-el employees: "rig entry-level employees": roustabout, floorman, welder, welder helper, truck helper, mechanic helper.

(Resp. Exh. 87; Tr. 1409–1414).

United States Department of the Interior, Office of Hearings and Appeals

LOFFLAND BROTHERS CO.

OEO 75–1

Decided: July 18, 1977.

Decision affirming and adopting Recommended Decision of Administrative Law Judge issued April 21, 1977 (Office of Economic Opportunity (OEO), Petitioner v. Loffland Brothers Company, Respondent; Docket OEO 75–1) finding that Respondent had failed to comply with Executive Order 11246 and implementing regulations and that, as prescribed therein, Respondent should be prohibited from holding government contracts until such time as it met certain prescribed conditions.

Appearances: Henry J. Strand, Office of the Regional Solicitor, Department of the Interior, for Petitioner, OEO; R. Robert Huff, Huff and Huff, Inc., Tulsa, Oklahoma, for Respondent.

Decision

Exceptions to the Recommended Decision issued on April 21, 1977, and responses to those exceptions have been timely filed by both parties. Upon due consideration, the exceptions of the parties are rejected as being without merit and the Recommended Decision of the Administrative Law Judge is affirmed and adopted as the final decision except for the following changes suggested by the parties in their briefs and exceptions:

Page 11. Line 15, last paragraph; change January 1, 1971, to July 1, 1971;

Page 36. Line 1, second table; change 41 percent (18/44) 39 percent (17/44) to 46 percent (18/39) 44 percent (17/39);

Page 38. Second paragraph, change "Each land rig uses two or three crews, consisting of one driller, derrickman, and two motormen" to "A crew consists of one driller, a derrickman, a motorman, and two floormen."

Page 43. First paragraph, change 60–2.10(b) to 60–2.11(b);

Page 44. First sentence of last paragraph change word "population" to "workforce."

Order

Wherefore it is ordered (1) that all of Loffland's Government contracts and Government subcontracts are canceled, and (2) that any Government contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts with Loffland. This order is effective on the date it is approved by the Director, Office of Federal Contract Compliance, U.S. Department of Labor in accordance with 41 CFR 1–12.807–3 and will remain in effect until such time as Loffland:

1. Submits an Affirmative Action Program for minorities and women in rig job classifications in its Southern Division that is acceptable to the Department of the Interior: or

2. Undertakes an alternative program for rig job classifications in its Southern Division under which it hires and promotes black minorities and women in a one-for-one ratio with other persons and notifies the Department of the Interior in writing that it has implemented this program under which it will hire one black minority and one woman (or in the alternative one black female) for each non-minority male hired and promote one black minority and one woman (or in the alternative one black female) for each non-minority male promoted.

a. Under the alternative program Loffland must continue to hire and promote in the required one-for-one ratio in its Southern Division until the number of black minorities reaches 24.8 percent and the number of female employees reaches 35.1 percent of the employees in each rig job classification. The one-for-one hiring ratio must be continued or resumed as necessary to maintain at least these percentages of black minorities and females in each rig job classification.

b. Loffland must maintain and make available an adequate applicant roster and if it is unable to adhere to the one-for-one ratio of the alternative program due to unavailability of qualified black minorities or women Loffland must record the specific reasons for its failure to comply and make these and other relevant personnel records available to the Department of the Interior.

The provisions of this order will be administered in accordance with the guidelines set forth in the Recommended Decision which has been affirmed and adopted as the final decision in this proceeding.

David Torbett,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 79–11555 Filed 4–16–79; 8:45 am]

BILLING CODE 4510–27

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee; Meeting

The Informal Ad Hoc Advisory Subcommittee on Power Technology for Future Synchronous Satellites and Platforms will meet on May 2 and 3, 1979, in Room 625, NASA Headquarters, 600 Independence Ave., SW, Washington, D.C. The meeting will be open to the public up to the seating capacity of the room (about 40 persons including Subcommittee members and participants).

The Subcommittee was established to identify the power technologies required to meet the needs of synchronous space activities through the mid 1990's and to evaluate the adequacy of current Office of Aeronautics and Space Technology and other research and technology efforts to meet those needs. The chairman is Mr. Fred H. Esch, and there are nine members of the Subcommittee.

Agenda

May 2, 1979

9:00 a.m.—Introductory Remarks
9:30 a.m.—Presentation of Requirement Summary
1:00 p.m.—Presentation of Strawman Technology Plan

May 3, 1979

9:00 a.m.—Review of Strawman Technology Plan by Committee Members
1:00 a.m.—Committee Discussion and Formulation of Final Plan
4:00 p.m.—Adjourn

For further information contact Mr. Jerome P. Mullin, Executive Secretary of the Informal Ad Hoc Advisory

Subcommittee on Power Technology for Future Synchronous Satellites and Platforms, Code RTS–6, NASA Headquarters, Washington, D.C. 20545 (202/755–3280).

Arnold W. Frutkin,
Associate Administrator for External Relations.
April 11, 1979.

[Notice 79–42]
[FR Doc. 79–11813 Filed 4–16–79; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee Meeting

April 10, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at Columbia Plaza, 2401 E Street, NW., Washington, D.C. 20506 in room 1422, from 9:30 a.m. to 5 p.m. on May 1, 1979.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibits beginning after July 1, 1979.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW., Washington, D.C. 20506, or call 202–724–0367.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 79–11908 Filed 4–16–79; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edision Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 47 and 44 to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (the licensee) which revised Technical Specifications for operation of the Zion Station, Unit Nos. 1 and 2, located in Zion, Illinois. The amendments are effective as of the date of issuance.

These amendments delete the surveillance requirements for the performance of cold rod drop tests and clarify the requirements for performance of hot rod drop tests.

The application for these amendments 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 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 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 these amendments.

For futher details with respect to this action, see (1) the application for amendments dated March 23, 1979, (2) Amendment Nos. 47 and 44 to License Nos. DPR–39 and DPR–48, 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., Washigton, D.C. 20555 and at the Zion-Benton Public Library District, 2600 Emmans Avenue, Zion, Illinois 60099. 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 9th day of April, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Dockets 50–295, 50–304]
[FR Doc. 79–11866 Filed 4–16–79; 8:45 am]
BILLING CODE 7590–01–M

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. DPR–67 issued to Florida Power & Light Company (the licensee), which revised Technical Specifications for operation of St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

This amendment revised the technical Specifications to allow replacement of selected safety-related hydraulic snubbers with mechanical snubbers and to revise snubber surveillance requirements. The amendment also allows relocation of sample lines for the safety injection tanks and revises the Technical Specifications to add surveillance requirements for the containment isolation valves in the new sample lines.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1978, as revised April 3 and 19, 1978, and March 8, 1979, and the application for amendment dated November 16, 1978 (2) Amendment No. 31 to License No. DPR–67, 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 Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. A copy of items (2) and (3) may by 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 5th day of April 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4 Division of Operating Reactors.

[Docket 50-335]

[FR Doc. 79-11867 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 58 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to correct typographical and editorial errors; to improve clarity and consistency of several Technical Specification requirements; and to conform with the provisions of the Westinghouse plant Standard Technical Specifications for improved radiation monitors installed by the licensee.

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 November 24, 1978 (Proposed Change No. 139, Supplement No. 3), (2) Amendment No. 58 to License No. DPR-3, 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 Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. 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 Reators.

Dated at Bethesda, Maryland, this 3rd day of April 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[Docket 50-29]

[FR Doc. 79-11888 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

Yankee Atomic Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 57 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Rowe, Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the provisions in the Technical Specifications for the facility to permit movement of a temporary gate and shielding panels over the spent fuel pit and authorizes implementation of the modifications of the spent fuel pit as described in the licensee's application, Proposed Change No. 158, Supplement No. 3 as supplemented. The modifications involve: (1) Installations of a stainless steel liner in the spent fuel pit, (2) installation of a full width division wall with gate across the north end of the pit, (3) installation of spent fuel rack supports, (4) provisions to enlarge the enclosed area of the spent fuel pit building, (5) installation of a temporary gate in the existing gate support brackets, (6) installation of shielding between the spent fuel and the temporary gate, and (7) addition of a redundant pump to the spent fuel pit cooling system and associated piping modifications. In addition, the amendment deletes the provisions to permit moving of temporary support brackets and a shielded work platform since they are no longer required.

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.

The Commission's "Notice of Proposed Issuance of Amendment to Operating License" in connection with the licensee's request to expand the spent fuel storage capacity from 391 fuel assemblies to 721 assemblies was published in the **Federal Register** on September 21, 1978 (43 FR 42825). As indicated in this Notice, the Commission's staff has determined that the modifications approved by this amendment have a utility independent of the proposed increase in spent fuel storage capacity. Therefore, based on the above consideration, the Commission's staff has (1) approved the modifications described above separately from consideration of the proposed increase in spent fuel storage capacity and (2) determined that 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 invironmental 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 February 7, 1979 (Supplement No. 3 to Proposed Change No. 158) and supplement thereto dated March 5, 1979, (2) Amendment No. 57 to License No. DPR-3, (3) the Commission's related Safety Evaluation, and (4) Notice of Proposed Issuance of Amendment to Operating License, dated September 11, 1978 (43 FR 42825, September 21, 1978). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2), (3) and (4) 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.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[Docket 50-29]

[FR Doc. 79-11869 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Electric Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 36 to Facility Operating License No. DPR-24 issued to Wisconsin Electric Power Company, which revised Technical Specifications for operation of Point Beach Nuclear Plant Unit No. 1, located about 15 miles north of Manitowoc, Wisconsin. The amendment is effective as of the date of issuance.

The amendment extends the reactor coolant system pressure-temperature heatup and cooldown curves from seven to eleven effective full power years for Unit No. 1.

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 November 16, 1978, as supplemented January 5 and February 23, 1979, (2) Amendment No. 36 to License No. DPR-24, 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 University of Wisconsin, Stevens Point Library, Stevens Point, Wisconsin 54481. 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 6th day of April 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket 50-266]

[FR Doc. 79-11870 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Electric Power Co.; Issuance of Amendment to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 35 and 41 to Facility Operating Licenses No. DPR-24 and DPR-27 issued to Wisconsin Electric Power Company (licensee) for operation of Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in the town of Two Creeks, Manitowoc County, Wisconsin. The amendments are effective as of the date of issuance and permit an increase in spent fuel storage capacity from 351 to 1502 fuel assemblies.

The application for the amendments 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 amendments.

In response to the Notice of Proposed Issuance of Amendments to Facility Operating Licenses, published in the **Federal Register** on May 10, 1978 (43 FR 20064), the Lakeshore Citizens for Safe Energy (intervenors) requested a hearing and the State of Wisconsin requested to participate as an interested state. On December 13, 1978, the licensee, the intervenor, the State of Wisconsin and the NRC staff requested the Atomic Safety and Licensing Board to issue an order approving the withdrawal of intervenor from the proceeding on the basis of a settlement agreement entered into among intervenor, licensee and the NRC staff. By Order of January 8, 1979, the ASLB granted this request and terminated the hearing proceedings.

The Commission has prepared an Environmental Impact Appraisal (EIA) dated April 4, 1979, and has concluded that an Environmental Impact Statement for this particular action is not warranted because the actions authorized by these license amendments will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendments dated March 21, 1978, as supplemented and amended June 14, July 19, September 29 and October 10, 1978; January 3, 29 and 30 and February 7, 1979; (2) Amendment No. 35 and 41 to Licenses No. DPR-24 and DPR-27, respectively; and (3) the Commission's related Safety Evaluation and EIA.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., at the University of Wisconsin—Stevens Point Library, Attn: Mr. Arthur M. Fish, Stevens Point, Wisconsin 54481, and at the Manitowoc Public Library, 808 Hamilton Street, Manitowoc, Wisconsin 54220. 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 4th day of April 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket Nos. 50-266 and 50-301]

[FR Doc. 79-11871 Filed 4-16-79; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Public Service Corp., et al; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 27 to Facility Operating License No. DPR-43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee) which revised Technical Specifications for operation of the Kewaunee Nuclear Power Plant located in Kewaunee, Wisconsin. The amendment is effective as of March 1, 1979.

The amendment revised the provisions in the Appendix A and Appendix A Technical Specifications relating to organization changes. No functional changes in the licensee's nuclear related organization are involved in this amendment.

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 February 16, 1979 (2) Amendment No. 27 to Facility Operating License No. DPR–43, and (3) the Commission's letter dated April 5, 1979. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. 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 5th day of April 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket 50–305]

[FR Doc. 79–11872 Filed 4–16–79; 8:45 am]

BILLING CODE 7590–01–M

Wisconsin Public Service Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. DPR–43 issued to Wisconsin Public Service Corporation (the licensee), which revised the licenses for operation of the Kewaunee Nuclear Power Plant, Unit No. 1 (the facility), located in Kewaunee, Wisconsin. The amendment became effective on February 23, 1979.

The amendment adds license conditions to include the Commission-approved physical security plan as part of the license.

The licensee's 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 amendment. Prior public notice of this amendment was not required since this 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.

The licensee's filings dated May 25, 1977, January 9, 1978, December 18, 1978, January 30, 1979, March 7, 1979, and March 27, 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 No. 28 to License No. DPR–43, and (2) the Commission's related letter to the licensee dated April 10, 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 Kewaunee Public Library, 822 Juneau Street, Kewaunee, Wisconsin 54216. 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: Directory, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of April 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket 50–305]

[FR Doc. 79–11873 Filed 4–16–79; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Visit to Boston Post Office

April 12, 1979.

Notice is hereby given that members of the advisory staff will visit the Boston (MA) Post Office on Thursday evening, April 19, for the purpose of acquiring general knowledge of postal operations. A report of the visit will be on file in the Commission's docket room.

David F. Harris,

Secretary.

[FR Doc. 79–11925 Filed 4–16–79; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

Order Approving Rule Change Submitted by Depository Trust Co. Relating to Depository Interface With Pacific Securities Depository Trust Co.

April 11, 1979.

In the matter of the Depository Trust Company, 55 Water Street, New York, New York 10041.

On March 7, 1978, The Depository Trust Company ("DTC") submitted, pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change expanding the depository interface between DTC and the Pacific Securities Depository Trust Company. Specifically, the proposed rule change would enable book entry movement of securities, but without a corresponding money movement, between their participants. The proposal was filed under Section 19(b)(3)(A) of the Act which permits certain types of proposed rule changes to be effective on filing subject to the authority of the Commission to summarily abrogate the rule change within 60 days. Amendment No. 1 to the proposed rule change was submitted on April 3, 1978, refiling the proposed rule change under Section 19(b)(2) of the Act which provides for full Commission review and public comment. On August 25, 1978, DTC submitted Amendment No. 2 to the proposal further expanding the interface to include book entry movements of securities with a corresponding money movement.

In accordance with Section 19(b) of the Act and Rule 19b–4 thereunder, notice of the proposed rule change was published in the **Federal Register** (43 FR 16579, April 19, 1978), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 14654, April 11, 1978. Notice of the amended filing and a request for comments was published in Securities Exchange Act Release No. 15121, September 1, 1978 (43 FR 40969, September 13, 1978). No letters of comment were received.

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to registered clearing agencies.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 15717; (SR-DTC-78-4)]
[FR Doc. 79-11875 Filed 4-16-79; 8:45 am]
BILLING CODE 8010-01-M

Application Filed by Elcor Corp. To Withdraw From Listing and Registration

April 11, 1979.

In the matter of Elcor Corporation; Common Stock, $1.00 Par Value.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Elcor Corporation (the "Company") has been listed for trading on the Amex since February 14, 1967. On March 21, 1979, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. The Company believes that dual listing would fragment the market for its common stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect upon the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before May 11, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[File No. 1-5341]
[FR Doc. 79-11874 Filed 4-16-79; 8:45 am]
BILLING CODE 8010-01-M

Life Insurance Co. of North America; Applications and Exemptions

April 11, 1979.

Notice of application pursuant to sections 11(a) and 11(c) for approval of exchange offer and pursuant to section 6(c) for exemptions from sections 27(a)(4), 22(e), 27(c)(1) and 27(d).

In the matter of Life Insurance Company of North America and Life Insurance Company of North America Separate Account A, 1600 Arch Street, Philadelphia, PA 19101.

Notice is hereby given that Life Insurance Company of North America ("LINA"), a stock life insurance company organized under the laws of the Commonwealth of Pennsylvania, and Life Insurance Company of North America—Separate Account A ("Separate Account"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"), (hereinafter called the "Applicants") have filed an Application on January 26, 1979, and an Amendment thereto on April 2, 1979, for an Order of the Commission pursuant to Section 6(c) of the Act, modifying previous Orders of the Commission exempting Applicants from the provisions of Sections 27(a)(4), 22(e), 27(c)(1) and 27(d), and for modifications of previous Commission Orders approving certain offers of exchange under Sections 11(a) and 11(c) of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Separate Account was established by LINA pursuant to the laws of the Commonwealth of Pennsylvania in connection with the issuance of group and individual variable annuity contracts ("Contracts") to certain persons who qualify for tax benefits under Sections 401, 403(a), 403(b) and 408 of the Internal Revenue Code of 1954 ("Code"), as amended. Applicants also offer the Contracts under deferred compensation and other retirement plans for persons who may not qualify for similar tax treatment. Under such Contracts, the Owner makes payments to LINA which deducts sales and administrative expenses therefrom. The balance of such payments under the Contracts are then allocated to one of six divisions of the Separate Account and are invested in shares of Decatur Income Fund, Inc., National Investors Corporation, Oppenheimer Fund, Inc., Windsor Fund, Inc., Dreyfus Third Century Fund, Inc. or Qualified Dividend Portfolio, Inc. (collectively called the "Fund(s)"), which are open-end diversified management investment companies registered under the Act. Contract owners or participants under group. Contracts may also allocate a portion of their net purchase payments to the LINA fixed accumulation or annuity account to provide for fixed or variable accumulation or payout, as applicable.

Applicants state that they intend to enter into a new fund participation agreement whereby they will add INA High Yield Fund, Inc. ("INA Fund"), a diversified, open-end management investment company registered under the Act, as an additional underlying fund of Separate Account. INA Fund's primary investment objective is to seek a high level of current income from investment in fixed income securities consistent with the assumption of moderate credit risk. Its secondary objective is capital growth. Applicants will continue to offer the current Funds for Separate Account investment allocation. Future reference to the term Fund(s) herein shall specifically include INA Fund unless otherwise indicated. Upon its addition, INA Fund will become available for Separate Account investment selection under each of the LINA Contracts currently being issued. Under the proposed agreement, shares of INA Fund may be purchased by Separate Account at net asset value without the imposition of a sales charge. INA Fund is managed and distributed by affiliates of the Applicants. Applicants state that the Separate Account may also enter into participation agreements with other diversified open-end management investment companies in the future. The requested exemption from 27(a)(4) of the Act noted below is sought not only with respect to Funds, but also for those funds to be added in the future.

Section 11

Applicants state that the Contracts currently permit Contract owners and group Contract participants, where permitted by state law and the retirement plan under which they are issued, to transfer the total value of their Separate Account Division allocation to another Separate Account Division, or to transfer the total or partial value of such Separate Account allocation to or

from LINA's general account providing for fixed accumulation, prior to annuitization. Applicants' Contracts also permit the Contract owner or group Contract participant to transfer the total value of his or her Separate Account Division allocation to another Separate Account Division after the annuity commencement date. No transfer to or from LINA's general account is permitted after the annuity commencement date nor are partial transfers permitted between Separate Account Divisions either before or after the annuity starting date. Unless otherwise restricted by law or the applicable retirement plan, a transfer may be made no more often than once yearly, measured from the date the owner or participant enters the retirement plan or date of last transfer, as applicable. One final pre-annuitization transfer is permitted one month before annuity payments commence without regard to any other limitation. Transfers are made upon written instructions to LINA. Separate Account Division transfers are based upon accumulation unit or annuity unit values determined as of the valuation date coincident with or next following the date LINA receives the written instructions to make the transfer. These exchange rights have been permitted by the Commission pursuant to its Orders of Approval under Section 11 (Investment Company Act Release Nos. 7769, 9726, and 10262).

Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act and to the extent necessary, modification of Commission Orders in Investment Company Act Releases 7769, 9258 and 10262 to permit a Contract owner or a participant under the Contracts to transfer the total value of his or her Separate Account Division to another Separate Account Division both prior to and after the annuity commencement date without regard to the previously imposed yearly limitation, with the exception that pre-annuity period accumulation unit transfers may only be made up to 30 days before the annuity commencement date. In addition to seeking such approval with respect to current underlying Funds of the Separate Account, Applicants also seek approval with respect to the accumulation or annuity units which will be measured by the shares of INA High Yield Fund. Applicants permit Contract owners and participants to transfer the partial or total value of their LINA general account allocations under the Contracts to a specified Separate Account Division prior to the annuity commencement date provided that no such transfer may be made within a six-month period measured from the date that the owner or participant first becomes covered under the Contract or the date of last transfer from the general account to the Separate Account. Prior to the annuity commencement date, Applicants also permit a Contract owner or participant to transfer the partial or total value of his or her Separate Account Division allocation to LINA's general account. No partial transfers involving LINA's general account may result in a remaining accumulation unit value of under $250 in either the Separate Account Division or the general account from which the transfer is made. Subject to the aforesaid conditions, the Applicants will make requested transfers pursuant to written instructions from the Contract owner or from a participant under a group Contract if permitted under the retirement plan under which the Contract is issued. Such instructions must specify the requested Separate Account Division change in detail. Separate Account Division transfers prior to the annuity commencement date are based upon accumulation unit values determined as of the valuation date coincident with or next following the date that LINA receives written instructions to make the transfer. Where such Separate Account Division transfer has been requested after annuitization, the number of existing annuity units will be changed to reflect the new number of annuity units based upon their respective values on the valuation date coincident with or next following the receipt of proper instructions. After the annuity starting date, the value of the amount to be transferred will be based upon the present value of the annuity and mortality and interest assumptions. No additional sales or administrative charges will be imposed for making any transfer under the Contracts. No remuneration will be paid to sales representatives upon such exchanges. Applicants represent that they will grant the new transfer privileges to all existing Contract owners and group Contract participants where permitted by state law and their retirement plan. They will send written notification of the new exchange rights to each current Contract owner.

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company, or any principal underwriter for such a company, to make, or cause to be made, an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have been firtst submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants represent that the proposed liberalization of certain of the current pre-annuity and post-annuity transfer privileges under the Contracts are based upon the same principles which were previously recognized by the Commission to be appropriate in the prior Orders granted Applicants. They state that such rights will give Contract owners and participants the right to fund their Contract with a mutual fund having different investment objectives should their needs change during their pre- or post-annuity years. Applicants believe that the unrestricted exchange privileges will be beneficial to their Contract owners and participants by permitting them to respond to changing economic conditions in a timely manner. They believe further that the extension of the proposed exchange rights to INA Fund is appropriate and in the interest of their Contract owners and participants.

Section 27(a)(4)

Applicants also request a modification of the Commission's prior Orders issued in Investment Company Act Releases Nos. 6273, 7677 and 9217. Such Orders collectively granted Applicants certain exemptions from Section 27(a)(4) of the Act to permit the initial payment on behalf of a plan participant under certain non-tax qualified retirement plans funded with Applicants' group Contract having the current Separate Account funds as the underlying investment media to be less than $20 provided, however, that such initial payment shall not be less than $10. Such previous Orders have also permitted the issuance of such Contracts to plans qualified under Section 408 of the Internal Revenue Code. Applicants now request that the previous Orders be modified so that the exemption from Section 27(a)(4) may be made applicable with respect to all of its group Contracts which are issued under any retirement plan which is not specifically entitled to the exemption specifically enumerated in Rule 27a–3 under the Act. In addition to obtaining such exemption with

respect to the current Funds underlying Applicants' Separate Account, they also seek such exemption with respect to the accumulation units which represent shares of INA High Yield Fund and those which may in the future represent the shares of future underlying Separate Account funds.

Section 27(a)(4) of the Act, in pertinent part, prohibits the sale of any periodic payment plan certificates issued by a registered investment company if the first payment is less than $20, or any subsequent payment is less than $10. Rule 27a–3 specifically provides an exemption from Section 27(a)(4) with respect to Contracts issued to retirement plans qualifying under Sections 401, 403(a) and 403(b) of the Code.

Applicants assert that the group Contracts which they offer, including those to be funded with INA High Yield Fund shares and those which may be funded by fund shares to be added as underlying Separate Account Funds in the future, may be sold to retirement savings plans which may or may not qualify for tax-deferred beneits under Section 408 or other provisions of the Code or which may not qualify for such tax-deferred benefits under any Section of the Code. The exemptive provisions of Rule 27a–3 apply only to retirement plans which qualify under Sections 401, 403(a) and 403(b) of the Code. Applicants assert that the same rationale underlying Rule 27a–3, namely to permit administrative convenience and the avoidance of additional expense to employers in making payroll deductions, applies with respoect to all retirement plans which may be funded with their group Contracts. They state that such Orders are also appropriate for INA Fund Separate Account allocations and for such allocations to future Separate Account underlying funds.

Sections 22(e), 27(c)(1), and 27(d)

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program ("Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System ("System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of Section 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contraot from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with Section 51.358 as it pertains to (i) redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order and (ii) redemption values under Contracts issued prior thereto but attributable to payments made subsequent to the date of such order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the State's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor

suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each Prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, Applicants will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market specifically to bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 30, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following April 30, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 10658 (812–4424)]
[FR Doc. 79–11876 Filed 4–16–79; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organization; Proposed Rule Change by Philadelphia Stock Exchange, Inc. ("Phlx")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on March 30, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Phlx's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to rescind its Rules 651 "Advertising" and 653 "Radio Broadcasting", which require that members and member organizations obtain Exchange approval prior to publication.

Rule 652 "Market Letters" would be amended to require prior approval by a member or a general partner or a holder of voting stock in a member organization, of all advertising, research reports or sales literature issued by a member organization. Currently, such approval is required under Rule 652 for market letters. Definitions have been added as follows:

"The term 'advertisement' refers to any material for use in any newspaper or magazine or other public medium or by raido, telephone recording or television.

The term 'research report' refers to printed or processed analysis covering individual companies or industries.

The term 'sales literature' refers to printed or processed material interpreting the facilities offered by a member organization or its personnel to the public, discussing the place of investment in an individual's financial planning, or calling attention to any market letter, research report or sales literature, which is prepared for and given general distribution."

The standards set forth in the Supplementary Information Regarding Rules 651, 652 and 653, would not be amended and would continue to be applicable under the amended rule.

Under the amended rule, members and members organizations would be required to retain all advertising material, market letters, research reports or sales literature, for a period of three years.

These amendments place responsibility for adherence to the standards for communications with the public with the member and member organization.

The Exchange would review adverstising for compliance during the course of routine inspections. Non-compliance with the standards would result in enforcement proceedings against the member or member organization.

Phlx's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to place the responsibility of compliance with advertising standards with the member and member organization. The proposed rule change will relieve the burden on members and member organizations in having to submit advertising material to the Exchange for approval prior to publication or broadcast deadlines. It is also unnecessarily duplicative for the Exchange to continue with this function.

Advertising would be reviewed after publication on a sampling basis during the course of routine inspections. Failure to comply with advertising standards would subject the member or member organization to enforcement proceedings. Since the Securities Exchange Act of 1934 does not address itself to surveillance procedures to be used by self-regulators, the Exchange is of the opinion that the amended review procedures would continue to fulfill its regulatory obligations.

As with any literature prepared by members and member organizations, the Exchange staff would offer pre-publication consultation for those desiring to submit advertisements voluntarily.

The basis for the proposed rule change is found in Section 6(b)(8) of the Securities Exchange Act of 1934, as amended, which requires, in pertinent part, that the rules of the Exchange not impose any burden on competition not

necessary or appropriate. The proposed rescission of the requirement of pre-approval for advertising by the Exchange eliminates a burden on competition since many non-member broker/dealers are not subject to such a requirement.

Comments Received From Members, Participants or Others

Comments were neither solicited not received by the Phlx on this proposal.

Burden on Competition

The Phlx has determined that the proposed amendments will not impose any burden on competition.

On or before May 22, 1979, or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of such filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions shoud refer to the file number referenced in the caption above should be submitted within 21 days of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

April 10, 1979.

[Release No. 34-15712; File No. SR-Phlx-79-3]
[FR Doc. 79-11877 Filed 4-16-79; 8:45 am]
BILLING CODE 8010-01-M

Order Approving Rule Change Submitted by Pacific Securities Depository Trust Co. Relating to Depository Interface With Depository Trust Co.

April 11, 1979.

In the matter of Pacific Securities Depository Trust Company, 301 Pine Street, San Francisco, California 94104.

On April 2, 1978, the Pacific Securities Depository Trust Company ("PSD") submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change expanding the interface between PSD and The Depository Trust Company to include book entry movement of securities, but without a corresponding money movement, between their participants. On August 11, 1978, PSD submitted Amendment No. 1 to the proposed rule change, expanding the interface to include book entry movements of securities with a corresponding money movement.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the **Federal Register** (43 FR 24640, June 6, 1978), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 14813, May 30, 1978). Notice of the amended filing and a request for comments was published in Securities Exchange Act Release No. 15199, September 29, 1978 (43 FR 46400, October 6, 1978). No letters of comment were received.

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[Release No. 15716; (SR-PSD-78-1)]
[FR Doc. 79-11878 Filed 4-16-79; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

California; Declaration of Disaster Loan Area

Glenn, Kern, Los Angeles, Madera, Orange, San Bernardino, San Diego, Tulare and Ventura Counties and adjacent counties within the State of California constitute a disaster area as a result of damage caused by freeze which occurred on December 1, 1978 through January 31, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on October 11, 1979, and for economic injury until the close of business on January 11, 1980 at:

Small Business Administration, District Office, 211 Main Street, 4th Floor, San Francisco, California 94105

Small Business Administration, District Office, 880 Front Street, Federal Building, Suite 4-S-33, San Diego, California 92188

or other other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 11, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area No. 1600]
[FR Doc. 79-11916 Filed 4-16-79; 8:45 am]
BILLING CODE 8025-01-M

Iowa; Declaration of Disaster Loan Area

Madison, Page, Taylor, Union and Warren Counties and adjacent counties within the State of Iowa constitute a disaster area as a result of damage caused by severe storm system consisting of hail, high winds, heavy rains and tornadoes which occurred on March 29, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 8, 1979 and for economic injury until close of business on January 9, 1980, at:

Small Business Administration, District Office, 210 Walnut Street, Des Moines, Iowa 50309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 9, 1979.

A. Vernon Weaver,

Administrator.

[Declaration of Disaster Loan Area No. 1611]
[FR Doc. 79-11915 Filed 4-16-79; 8:45 am]
BILLING CODE 8025-01-M

Region VIII Advisory Council; Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena,

Montana, has changed the date of its public meeting previously scheduled for 9:30 a.m., on Friday, May 4, 1979. The meeting is now scheduled for 9:30 a.m., on Thursday, May 3, 1979, at the Federal Building, 301 South Park, Room 289, Helena, Montana, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Ottley R. Tschache, District Director, U.S. Small Business Administration, Federal Building, 301 South Park, Drawer 10054, Helena, Montana 59601—(406) 585–5381.

Dated: April 12, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79–11917 Filed 4–16–79; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Indemnity Insurance Co. of North America; Change of Name

The Stuyvesant Insurance Company, a New York corporation, has formerly changed its name to Indemnity Insurance Company of North America, effective December 4, 1978. The company was last listed as an acceptable surety on Federal bonds at 43 FR 28702, June 30, 1978.

A certificate of authority as an acceptable surety on Federal bonds, dated December 4, 1978, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Indemnity Insurance Company of North America, New York, New York. This new certificate replaces the certificate of authority issued to the company under its former name, The Stuyvesant Insurance Company. The underwriting limitation of $1,029,000 established for the company as of July 1, 1978 remains unchanged.

Certificates of authority expire on June 30, each year, unless sooner revoked and new certificates are issued on July 1, so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: April 10, 1979.

D. A. Paglial,

Commissioner, Bureau of Government Financial Operations.

[Dept. Circ. 570, 1978 Rev., Supp. No. 11]

[FR Doc. 79–11857 Filed 4–16–79; 8:45 am]

BILLING CODE 4810–35–M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Reestablishment

Notice is hereby given of a determination by the Administrator of Veterans Affairs to reestablish the Cooperative Studies Evaluation Committee which expired on March 20, 1979. This determination follows consultation with the Committee Management Secretariat, GSA, and OMB, pursuant to the Federal Advisory Committee Act (Pub. L. 92–463) and OMB Circular No. A–63, Revised, March 27, 1974.

This committee provides opinions and advice concerning policy formulation and program planning with regard to cooperative studies and an appraisal of research proposals for cooperative studies primarily with concern as to their scientific merit. It also offers opinions on accomplishing program objectives more effectively and achieving economy in programs. The committee is essential to achieving the objective of elevating and maintaining a high level of scientific merit of a proposal for a cooperative study, and in assisting the Director, Medical Research Service, in decision-making related to the Cooperative Studies Program.

Interested persons may submit comments regarding the reestablishment of the Cooperative Studies Evaluation Committee to the Committee Management Officer, Veterans Administration Central Office, Room 1001, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: April 11, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 79–11859 Filed 4–16–79; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

Los Angeles & Salt Lake Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Los Angeles & Salt Lake Railroad Company, has filed with the Commission its amended color-coded system diagram map in docket No. AB 35 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulations which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 35 (SDM).

H. G. Homme, Jr.,

Secretary.

BILLING CODE 7035–01–M

SYSTEM DIAGRAM MAP of the LOS ANGELES & SALT LAKE RAILROAD CO. AB No. 35 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Los Angeles and Salt Lake Railroad Co. lines shown --

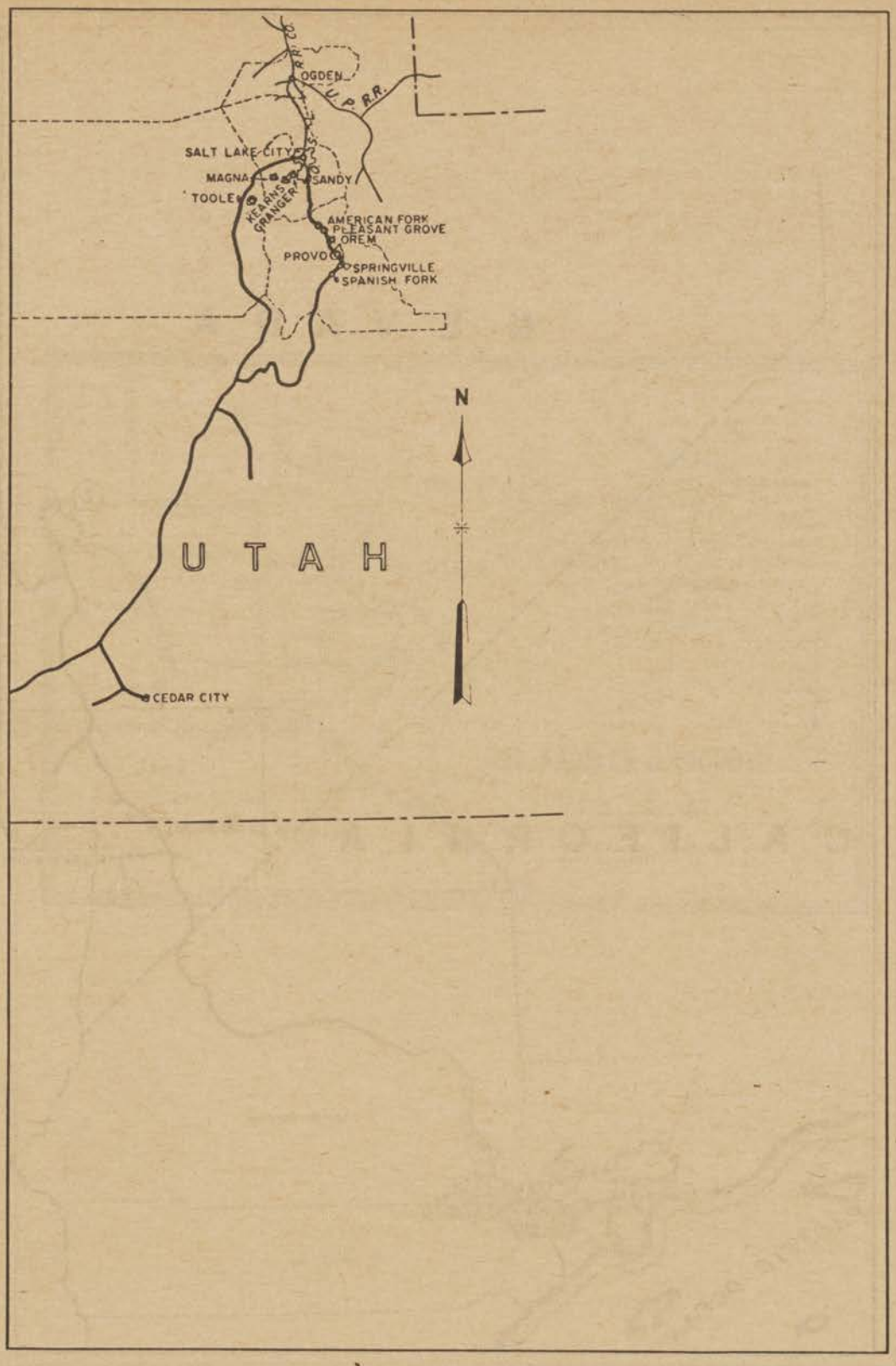
0 50 100
SCALE IN MILES

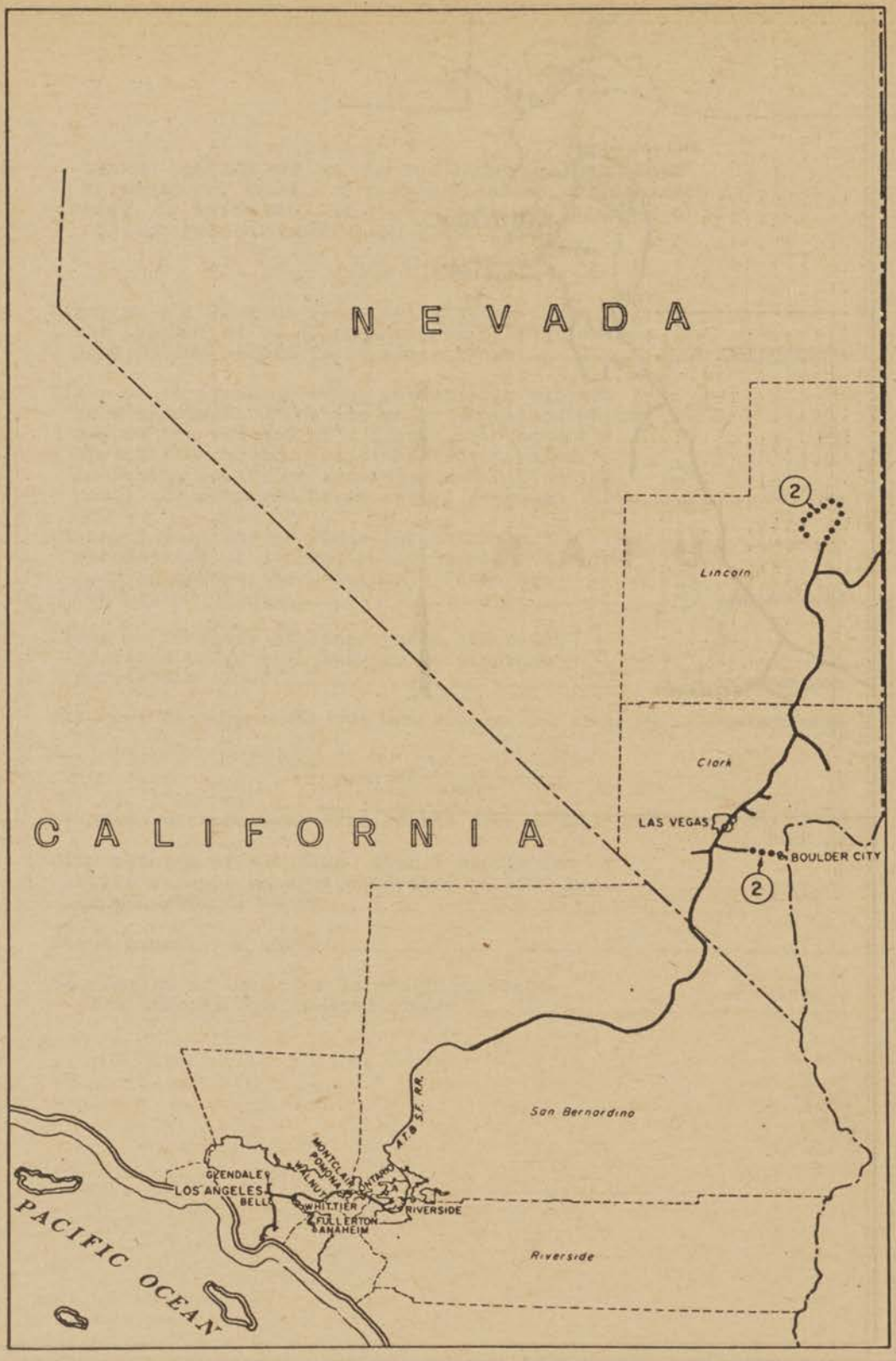
Standard Metropolitan Statistical Area (SMSA) shown ----

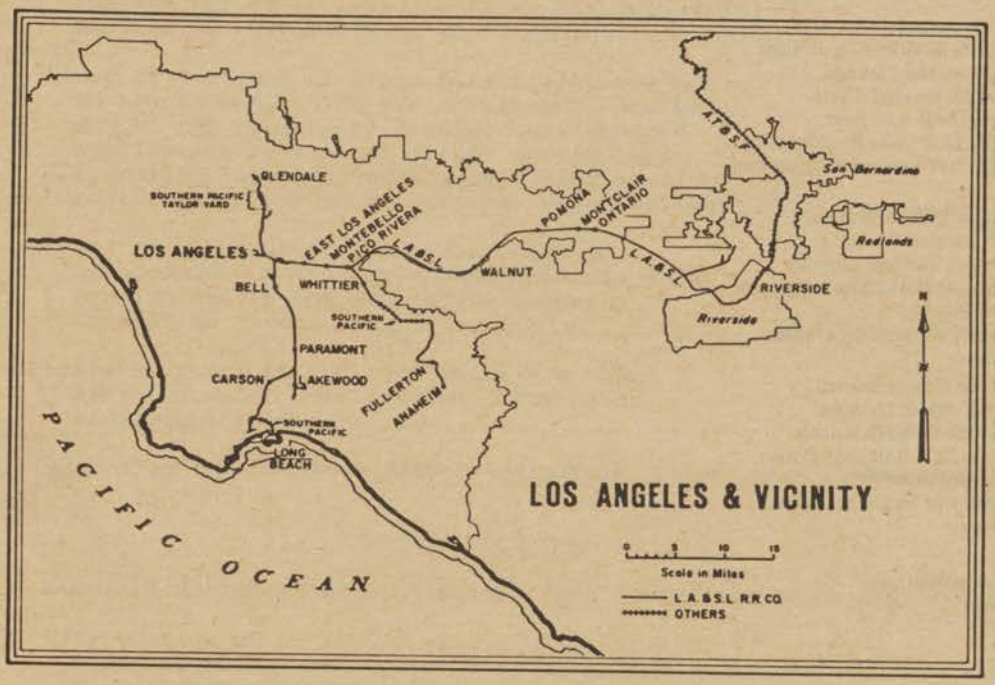
City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County


OGDEN
U.P. R.R.
SALT LAKE CITY
MAGNA
SANDY
TOOELE
KEARNS
GRANGER
AMERICAN FORK
PLEASANT GROVE
OREM
PROVO
SPRINGVILLE
SPANISH FORK
N
U T A H
CEDAR CITY


NEVADA
CALIFORNIA
Lincoln
Clark
LAS VEGAS
BOULDER CITY
2
2
San Bernardino
Riverside
ATSF RR
GLENDALE
LOS ANGELES
BELL
MONTCLAIR
POMONA
WALNUT
ONTARIO
RIVERSIDE
WHITTIER
FULLERTON
ANAHEIM
PACIFIC OCEAN



BILLING CODE 7035-01-C

Los Angeles & Salt Lake Railroad Company System Diagram Map (AB-35)

Line Descriptions

Pursuant to Interstate Commerce Commission regulations at 49 CFR 1121.23, the following are descriptions of lines in Categories 1, 2 and 3 as shown on the System Diagram Map for Los Angeles & Salt Lake Railroad Company.

Category 2—Lines potentially subject to abadonment or which the carrier has under study and believes may be the subject of a future abandonment application because of either aniticipated operating losses or excessive rehabilitation costs as compared to potential revenues.

Nevada

a. Designation of Line: Boulder City Branch
b. State(s) in which located: Nevada
c. County(ies) in which located: Clark
d. Milepost locations: M.P. 9.87 near Henderson to M.P. 22.67 near Boulder City
e. Henderson at M.P. 9.87 is an agency station on this line.

a. Designation of Line: Pioche Branch
b. State(s) in which located: Nevada
c. County(ies) in which located: Lincoln
d. Milepost locations: M.P. 14.78 near Panaca to M.P. 32.96 near Pioche
e. There are no agency or terminal stations located on this line.

a. Designation of Line: Prince Branch
b. State(s) in which located: Nevada
c. County(ies) in which located: Lincoln
d. Milepost locations: M.P. 0.10 near Prince Jct. to M.P. 8.81 near Prince
e. There are no agency or terminal stations located on this line.

[AB35 (SDM)]

[FR 79-11749 Filed 4-16-79; 8:45 am]

BILLING CODE 7035-01-M

Oregon Short Line Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Oregon Short Line Railroad Company, has filed with the Commission its amended color-coded system diagram map in docket No. AB 36 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulations which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 36 (SDM).

H. G. Homme, Jr.,
Secretary.

BILLING CODE 7035-01-M

SYSTEM DIAGRAM MAP of the OREGON SHORT LINE RAILROAD CO. AB No. 36 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Oregon Short Line Railroad Co. lines shown -

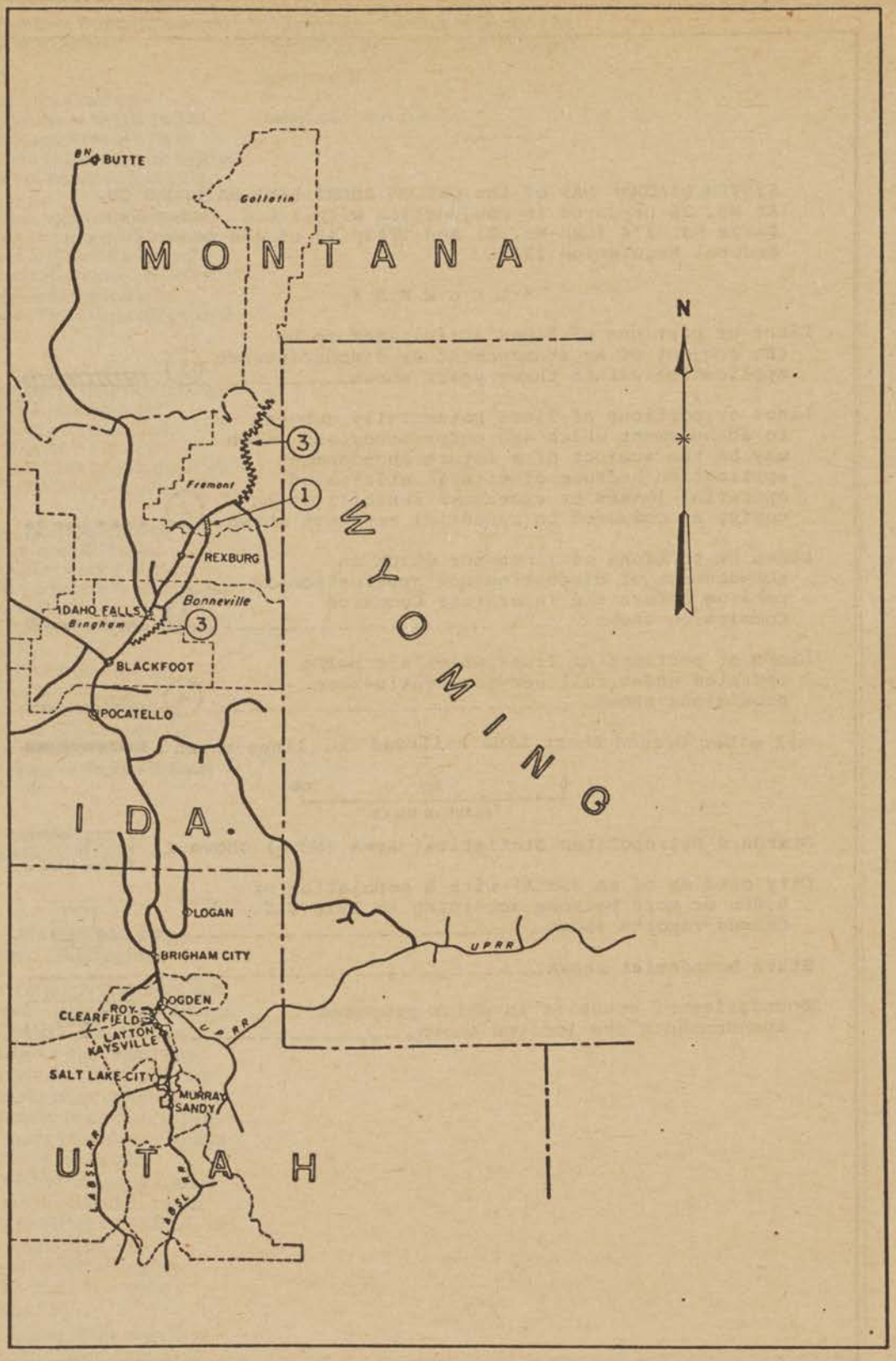
0 50 100
SCALE IN MILES

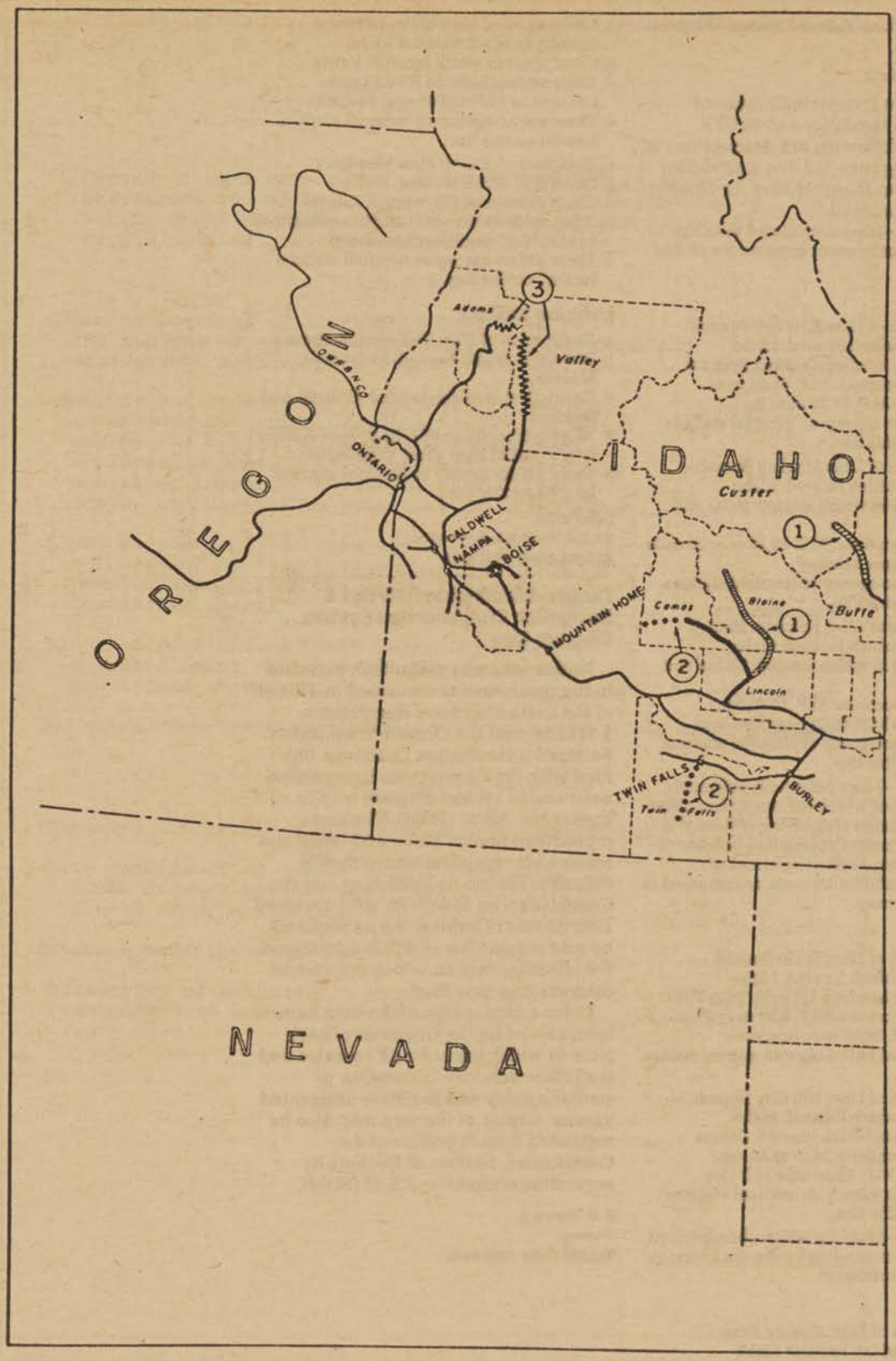
Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County


BN
BUTTE
Gallatin
MONTANA
N
3
Fremont
1
REXBURG
WYOMING
IDAHO FALLS
Bingham
Bonneville
3
BLACKFOOT
POCATELLO
IDA.
LOGAN
BRIGHAM CITY
UPRR
OGDEN
ROY
CLEARFIELD
LAYTON
KAYSVILLE
C&RR
SALT LAKE CITY
MURRAY
SANDY
UTAH
D&RGW RR
D&RGW RR



BILLING CODE 7035-01-C

Oregon Short Line Railroad System Diagram Map (AB–36)

Line Descriptions

Pursuant to Interstate Commerce Commission regulations at 49 CFR 1121.23, the following are descriptions of lines in Categories 1, 2 and 3 as shown on the System Diagram Map for Oregon Short Line Railroad.

Category 1—Lines anticipated to be the subject of abandonment applications within three years.

Idaho

a. Designation of Line: East Belt Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Fremont
d. Milepost locations: M.P. 38.56 near Newdale to M.P. 44.28 near Belt
e. There are no agency or terminal stations located on this line.

a. Designation of Line: Mackay Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Butte and Custer
d. Milepost locations: M.P. 59.45 near Arco to M.P. 86.07 near Mackay
e. There are no agency or terminal stations located on this line.

a. Designation of Line: Ketchum Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Blaine and Lincoln
d. Milepost locations: M.P. 15.65 near Richfield to M.P. 69.84 near Ketchum
e. There are no agency or terminal stations located on this line.

Category 2—Lines potentially subject to abandonment or which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs as compared to potential revenues.

Idaho

a. Designation of Line: Wells Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Twin Falls
d. Milepost locations: M.P. 0.00 near Twin Falls to M.P. 29.35 near Rogerson
e. Twin Falls at M.P. 0.00 is an agency station on this line.

a. Designation of Line: Hill City Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Camas
d. Milepost locations: M.P. 44.46 near Fairfield to M.P. 58.34 near Hill City
e. There are no agency or terminal stations located on this line.

Category 3—Lines for which abandonment applications are pending before the Interstate Commerce Commission.

Idaho

a. Designation of Line: Goshen Branch
b. State(s) in which located: Idaho
c. County(ies) in which located: Bingham and Bonneville
d. Milepost locations: M.P. 0.06 near Firth to M.P. 17.53 near Ammon
e. There are no agency or terminal stations located on this line.

a. Designation of Line: Idaho Northern
b. State(s) in which located: Idaho
c. County(ies) in which located: Valley
d. Milepost locations: M.P. 99.73 near Cascade to M.P. 133.61 near McCall
e. There are no agency or terminal stations located on this line.

a. Designation of Line: New Meadows
b. State(s) in which located: Idaho
c. County(ies) in which located: Adams
d. Milepost locations: M.P. 84.52 near Rubicon to M.P. 89.91 near New Meadows
e. There are no agency or terminal stations located on this line.

Idaho and Montana

a. Designation of Line: Yellowstone Branch
b. State(s) in which located: Idaho and Montana
c. County(ies) in which located: Gallatin and Fremont
d. Milepost locations: M.P. 52.00 near Ashton to M.P. 107.22 near West Yellowstone
e. There are no agency or terminal stations located on this line.

[AB36(SDM)]

[FR Doc. 79-11750 4-16-79 8:45 am]

BILLING CODE 7035-01-M

Oregon-Washington Railroad & Navigation Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Oregon-Washington Railroad & Navigation Company, has filed with the Commission its amended color-coded system diagram map in docket No. AB 37 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulations which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 37 (SDM).

H. G. Homme, Jr.,
Secretary.

BILLING CODE 7035-01-M

SYSTEM DIAGRAM MAP of the OREGON-WASHINGTON RAILROAD & NAVIGATION CO. AB No. 37 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Oregon-Washington Railroad & Navigation Co. lines shown --

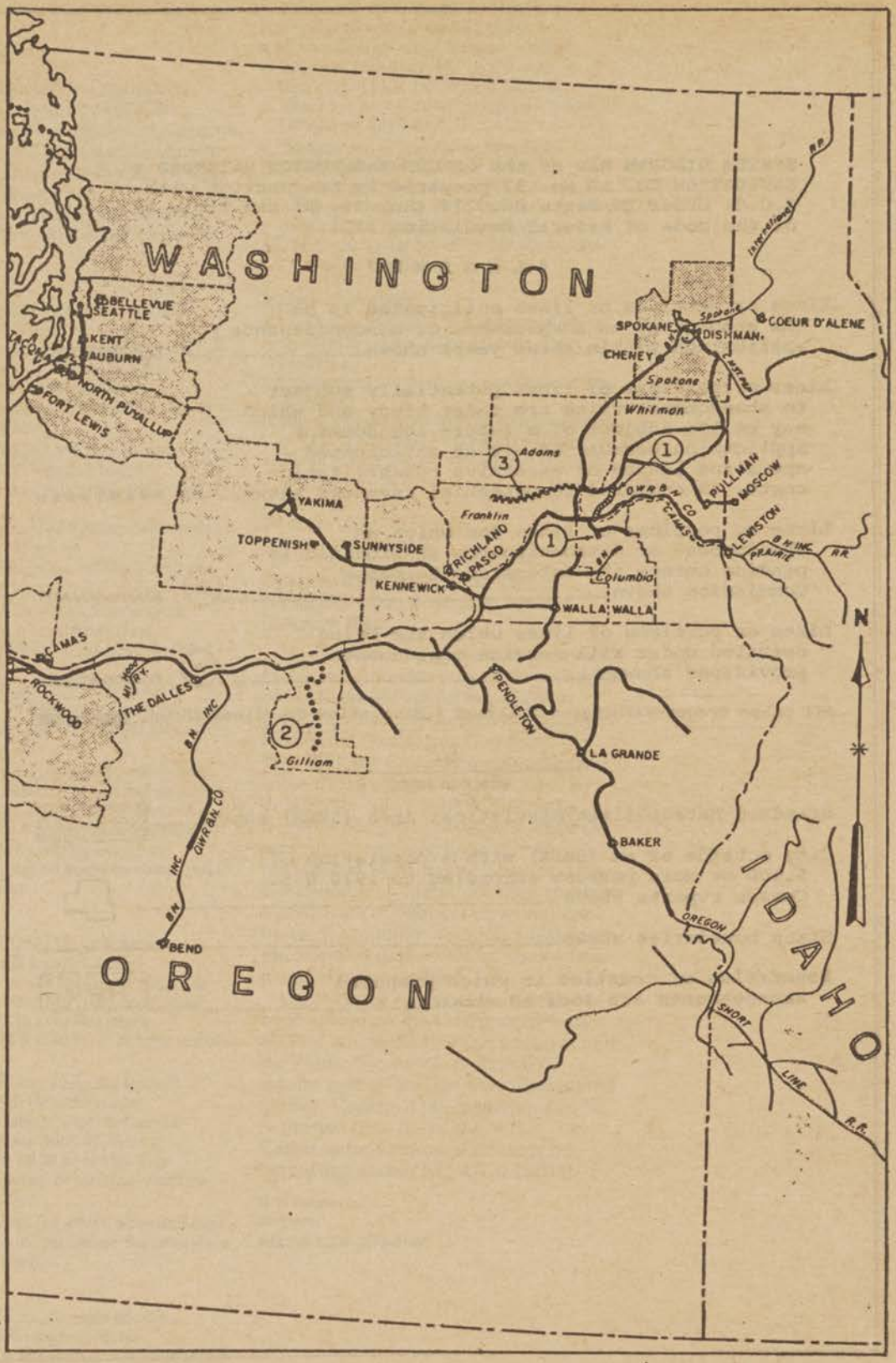
0 50 100
SCALE IN MILES

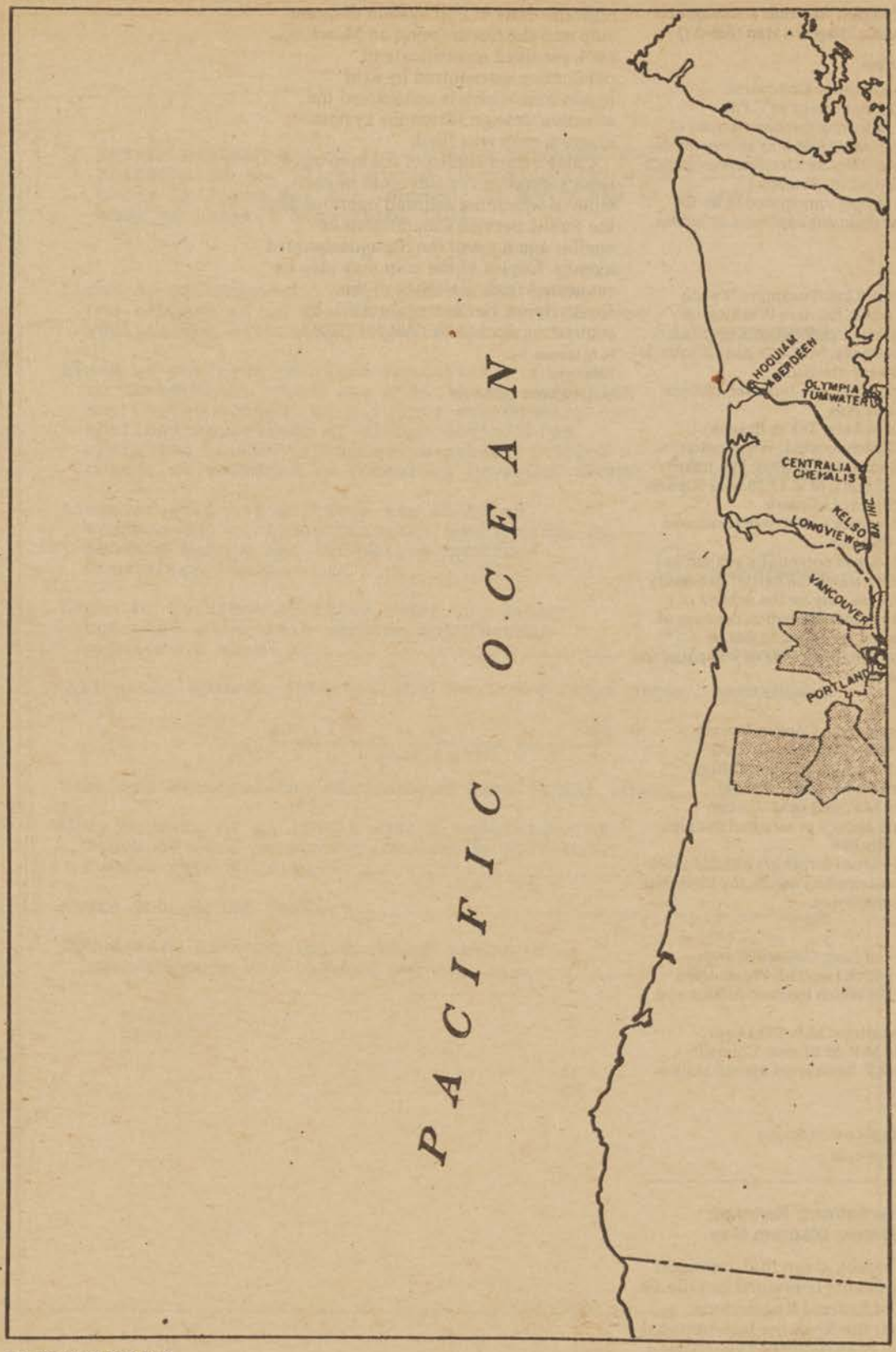
Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County


WASHINGTON
OREGON
IDAHO
BELLEVUE
SEATTLE
KENT
AUBURN
NORTH PUYALLUP
FORT LEWIS
YAKIMA
TOPPENISH
SUNNYSIDE
KENNEWICK
RICHLAND
PASCO
Franklin
Adams
Whitman
Spokane
CHENEY
SPOKANE
DISHMAN
COEUR D'ALENE
PULLMAN
MOSCOW
LEWISTON
PRAIRIE
WALLA WALLA
Columbia
PENDLETON
LA GRANDE
BAKER
OREGON
CAMAS
ROCKWOOD
THE DALLES
Gilliam
BEND
SHORT LINE R.R.
N



BILLING CODE 7035-01-C

Oregon-Washington Railroad & Navigation Company System Diagram Map (AB-37)

Line Descriptions

Pursuant to Interstate Commerce Commission regulations at 49 C.F.R. § 1121.23, the following are descriptions of lines in Categories 1,2 and 3 as shown on the System Diagram Map for Oregon-Washington Railroad & Navigation Company.

Category 1—Lines anticipated to be the subject of abandonment applications within three years.

Washington

a. Designation of Line: Tucannon Branch
b. State(s) in which located: Washington
c. County(ies) in which located: Columbia
d. Milepost locations: M.P. 4.71 near Starbuck to M.P. 5.10 near Starbuck
e. There are no agency or terminal stations located on this line.
a. Designation of Line: Tekoa Branch
b. State(s) in which located: Washington
c. County(ies) in which located: Whitman
d. Milepost locations: M.P. 17.63 near Riparia to M.P. 40.86 near LaCrosse
e. There are no agency or terminal stations located on this line.

Category 2—Lines potentially subject to abandonment or which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs as compared to potential revenues.

Oregon

a. Designation of Line: Condon Branch
b. State(s) in which Located: Oregon
c. County(ies) in which located: Gilliam
d. Milepost locations: M.P. 0.00 near Arlington to M.P. 44.5 near Condon
e. There are no agency or terminal stations located on this line.

Category 3—Lines for which abandonment applications are pending before the Interstate Commerce Commission.

Washington

a. Designation of Line: Connell Branch
b. State(s) in which Located: Washington
c. County(ies) in which located: Adams and Franklin
d. Milepost locations: M.P. 15.81 near Arlington to M.P. 52.81 near Connell
e. Connell at M.P. 52.94 is an agency station on this line.

[AB37 (SDM)]

[FR Doc. 79-11751 Filed 4-16-79 8:45 am]

BILLING CODE 7035-01-M

Spokane International Railroad; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Spokane International Railroad, has filed with the Commission its amended color-coded system diagram map in docket No. AB 121 (SDM). The maps reproduced here in black and white are reasonable reproductions of that system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulations which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets, by requesting docket No. AB 121 (SDM).

H. G. Homme, Jr.,
Secretary.

BILLING CODE 7035-01-M

SYSTEM DIAGRAM MAP of the SPOKANE INTERNATIONAL RAILROAD AB No. 121 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Spokane International Railroad lines shown _

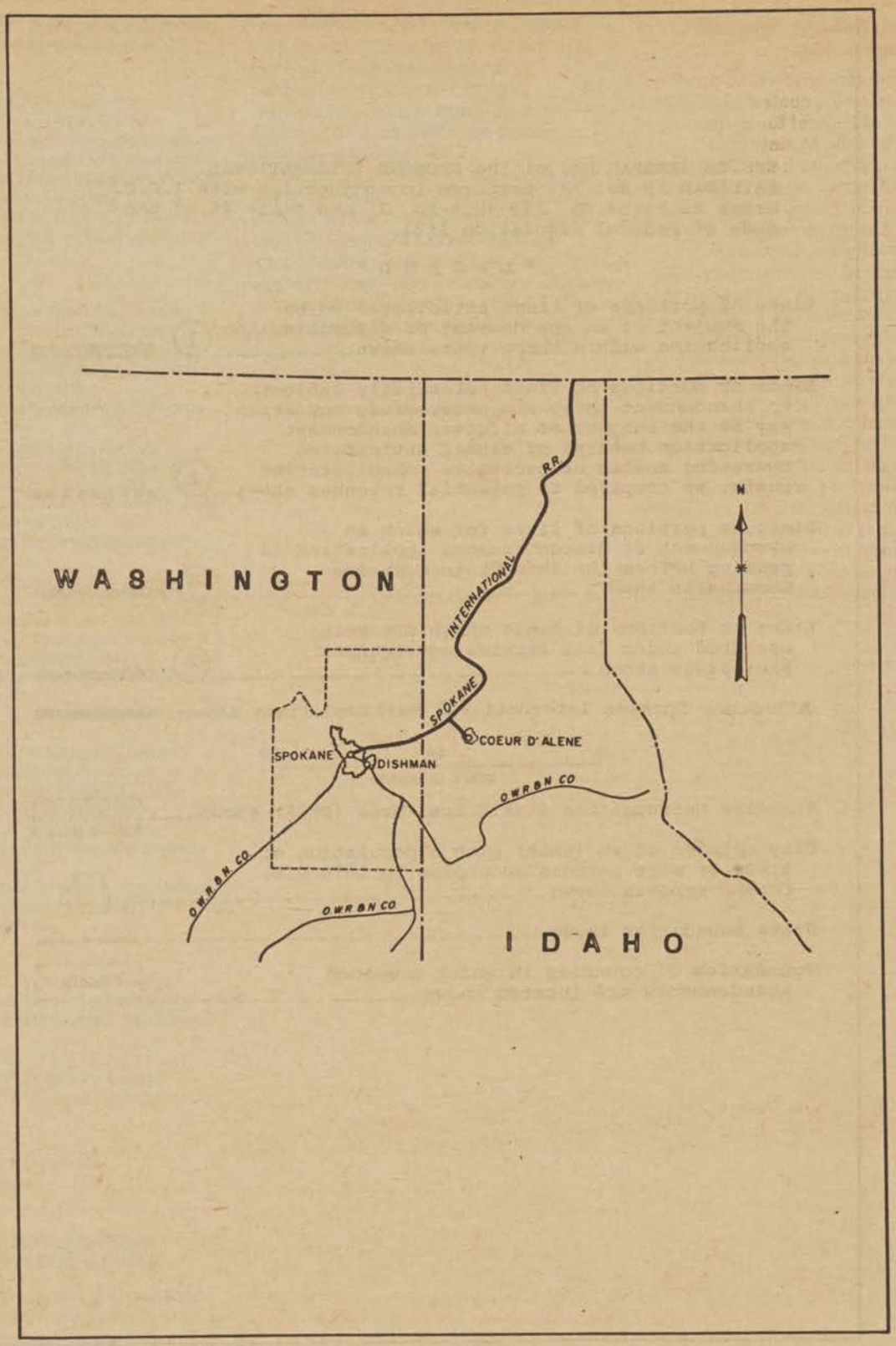
0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



[AB 121 (SDM)]
[FR Doc. 79-11753 filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-C

Mount Hood Railway; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121, 23, that the Mount Hood Railway, has filed with the Commission its amended-color coded system diagram map in docket No. AB 153(SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulations which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 153 (SDM).

H. G. Homme, Jr.,
Secretary.

BILLING CODE 7035-01-M

SYSTEM DIAGRAM MAP of the MOUNT HOOD RAILWAY AB No. 153 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

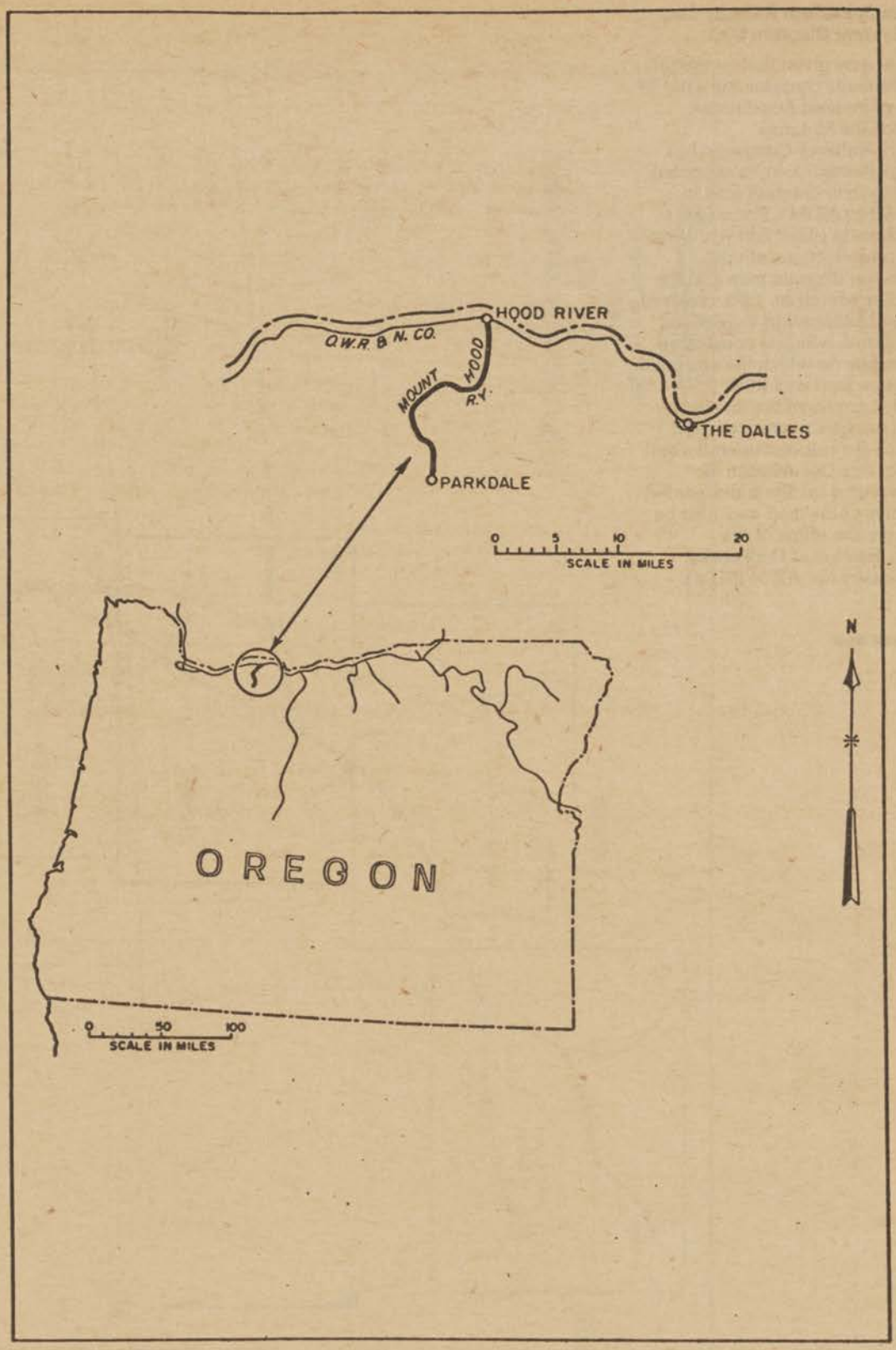
All other Mount Hood Railway lines shown ----------

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



[AB 153 (SDM)]

[FR Doc. 79-11754 Filed 4-16-79; 8:45 am]

BILLING CODE 7035-01-C

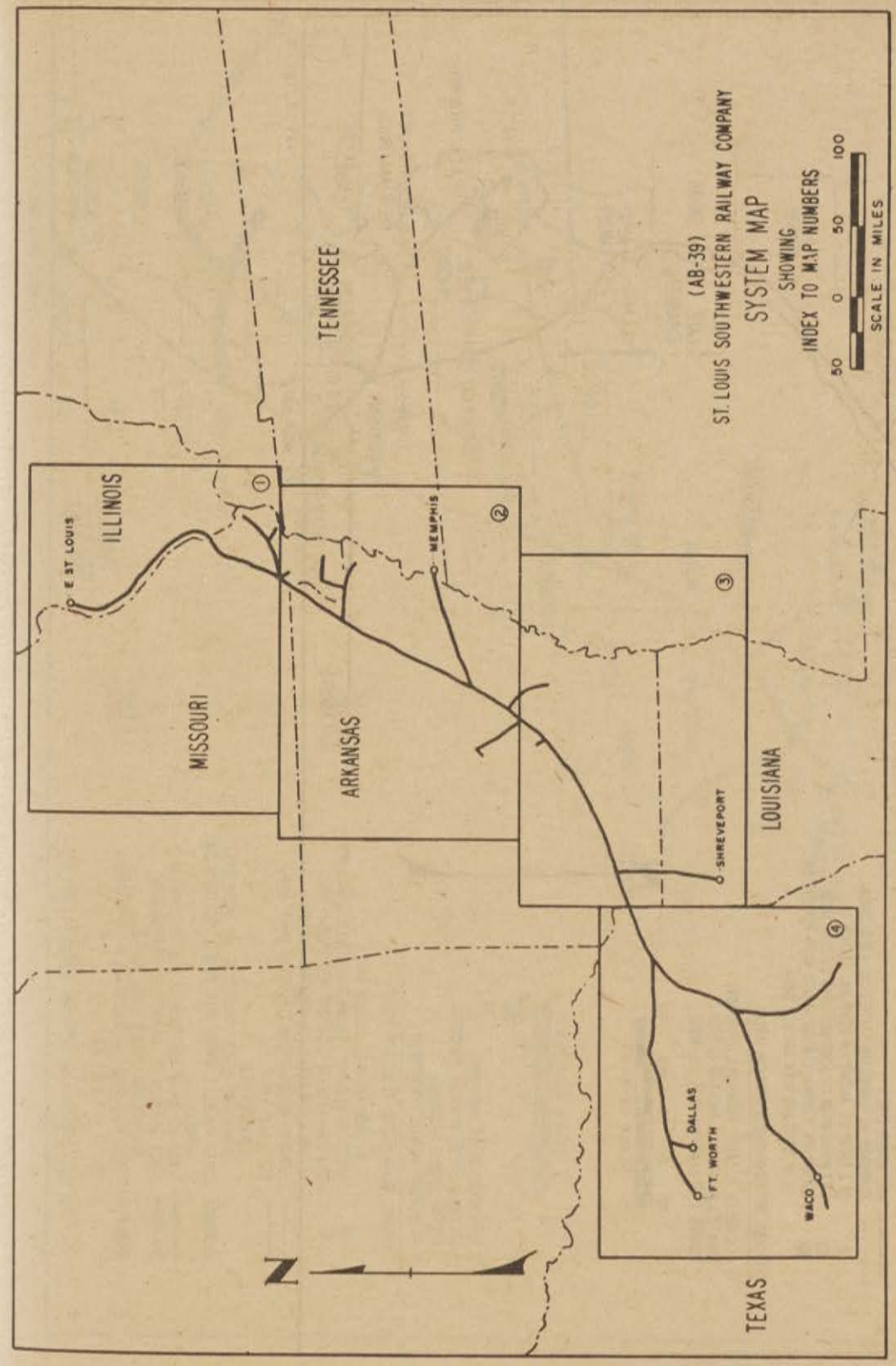
St. Louis Southwestern Railway Co.; Amended System Diagram Map

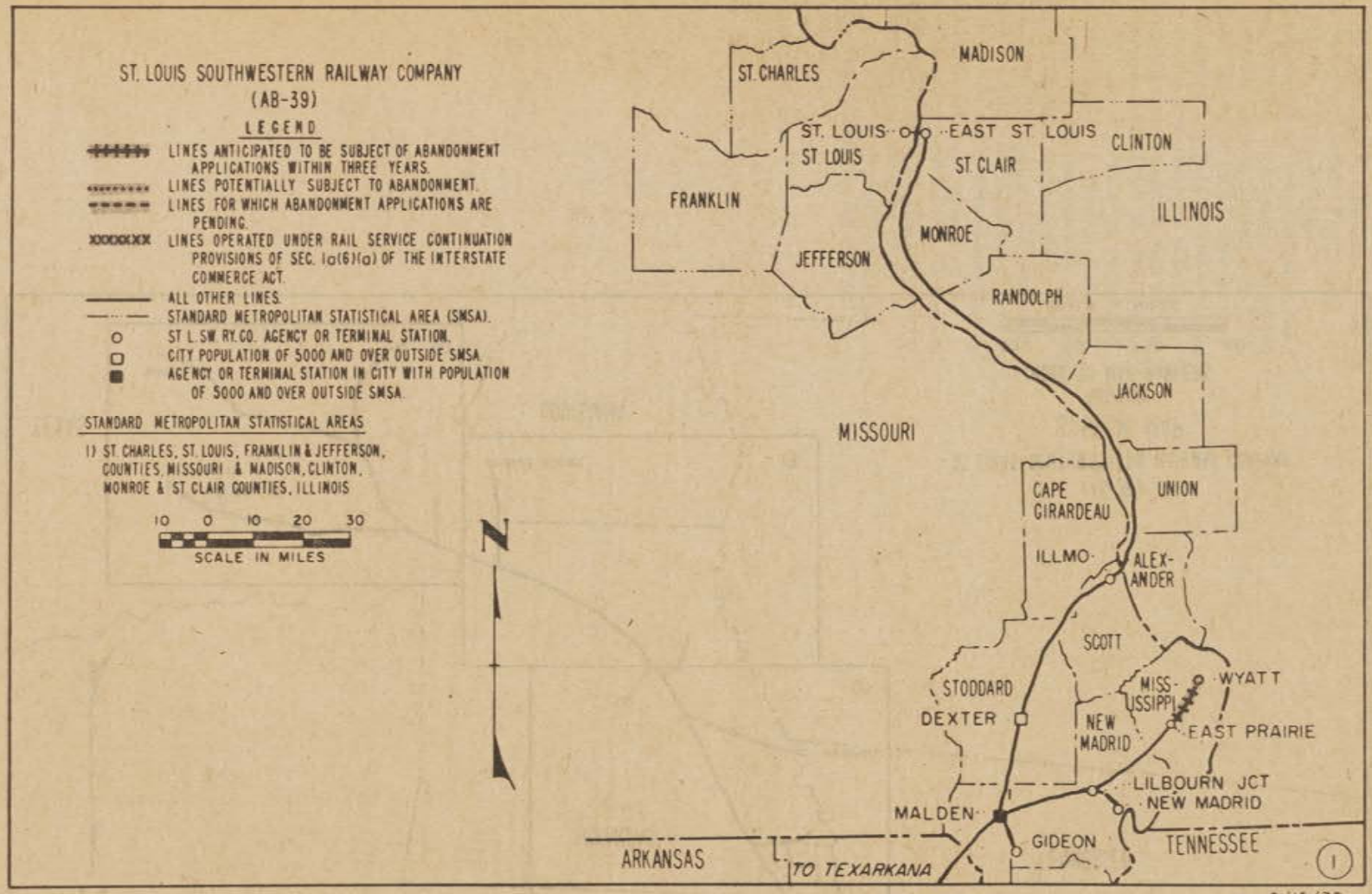
Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the St. Louis Southwestern Railway Company, has filed with the Commission its amended color-coded system diagram map in docket No. AB 39 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 30, 1979, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

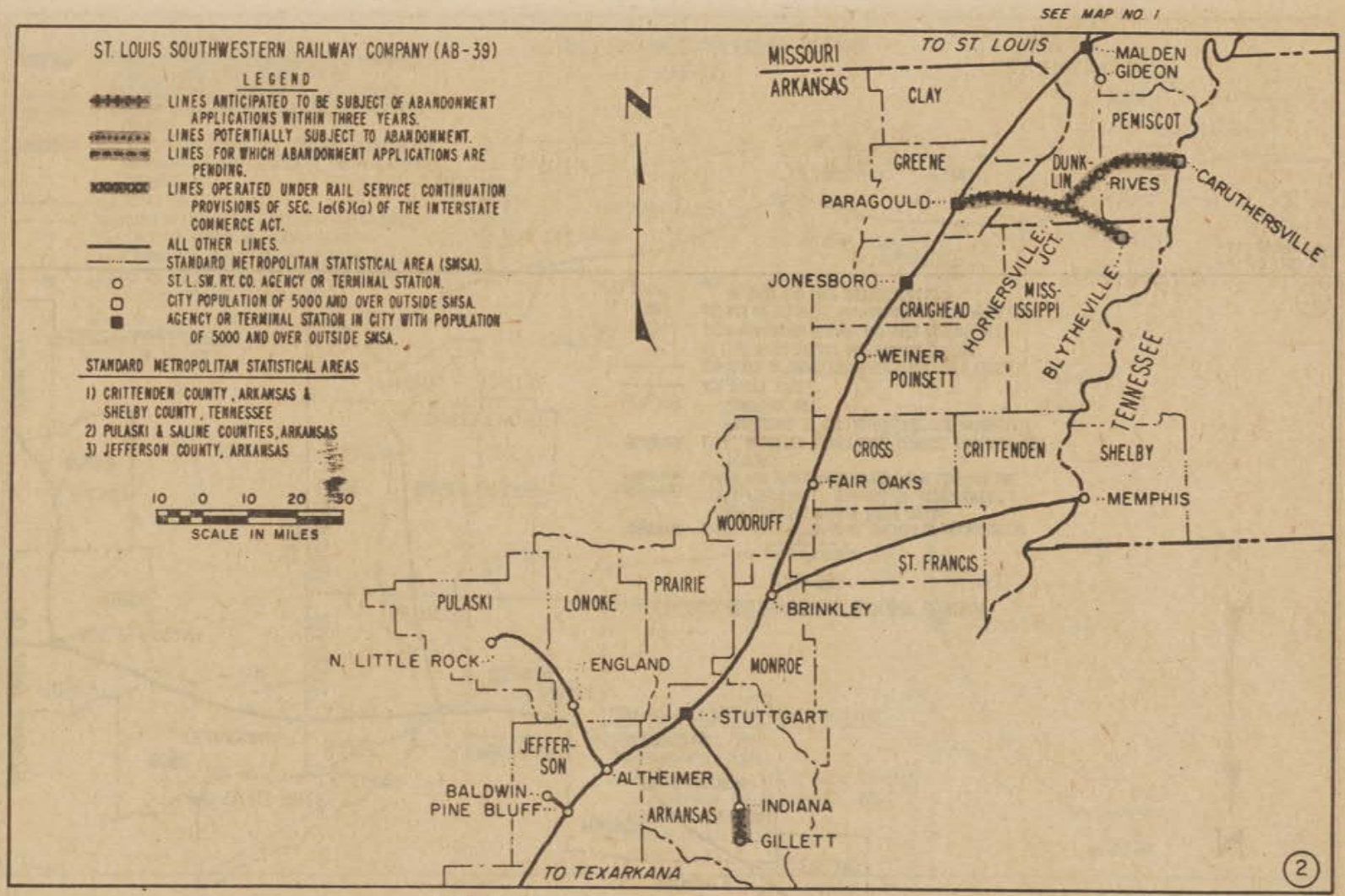
Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 39 (SDM).

H. G. Homme, Jr.,
Secretary.

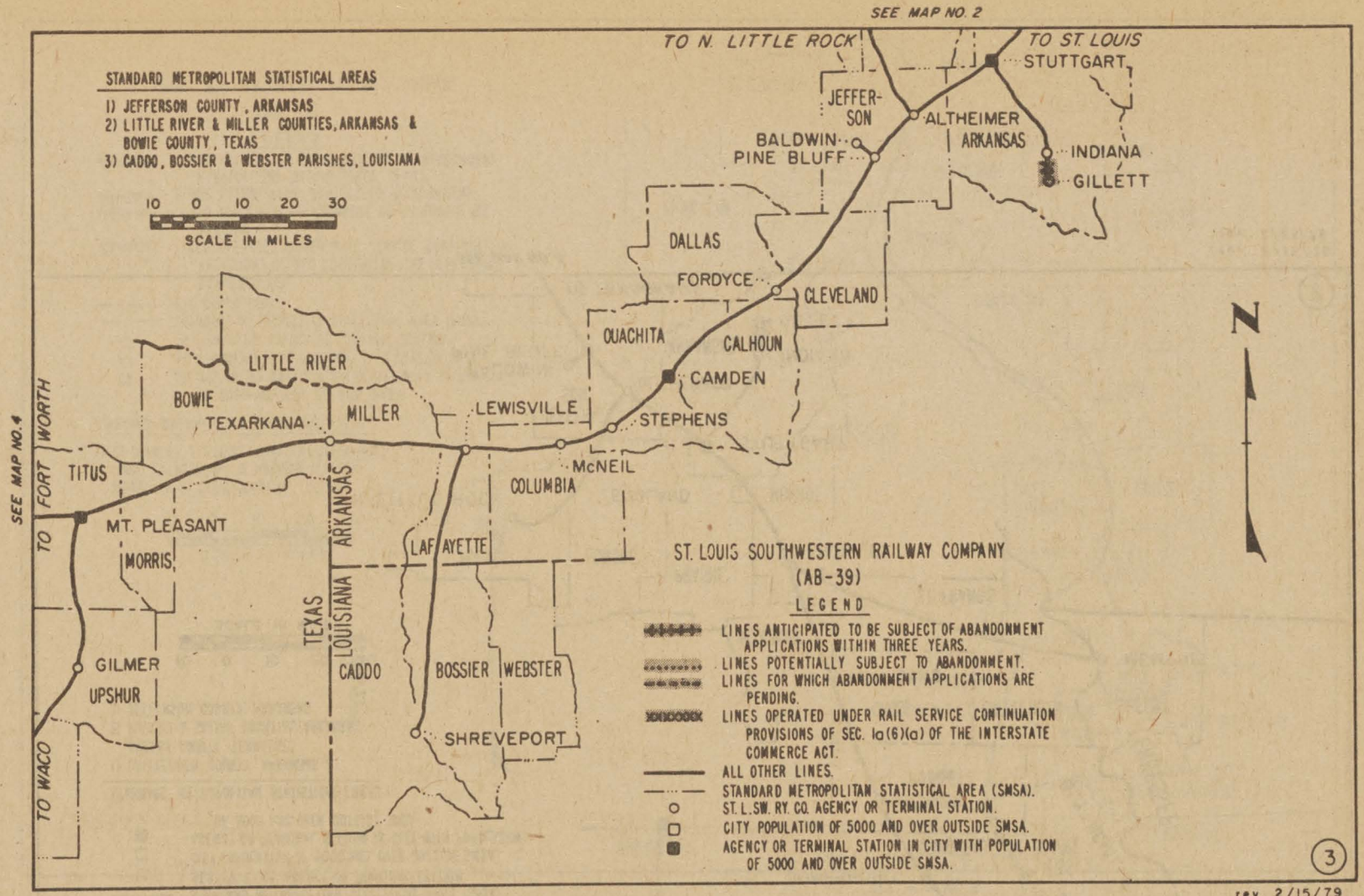
BILLING CODE 7035-01-M


(AB-39)
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
SYSTEM MAP
SHOWING
INDEX TO MAP NUMBERS
50 0 50 100
SCALE IN MILES
TENNESSEE
ILLINOIS
MISSOURI
ARKANSAS
LOUISIANA
TEXAS
E ST LOUIS
MEMPHIS
SHREVEPORT
DALLAS
FT. WORTH
WACO
N
1
2
3
4

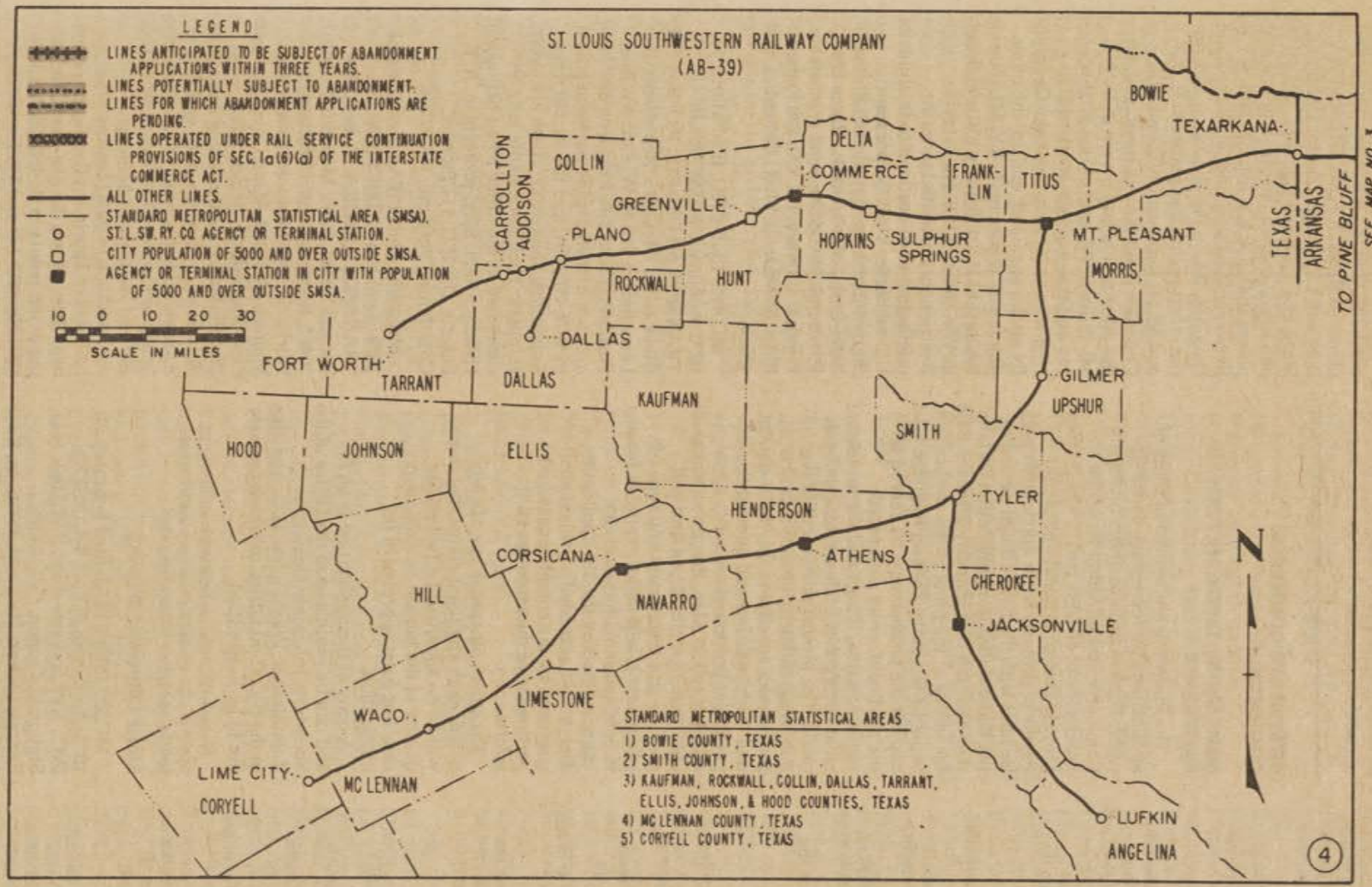

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
(AB-39)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
ST L SW RY CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
STANDARD METROPOLITAN STATISTICAL AREAS
1) ST. CHARLES, ST. LOUIS, FRANKLIN & JEFFERSON, COUNTIES, MISSOURI & MADISON, CLINTON, MONROE & ST CLAIR COUNTIES, ILLINOIS
10 0 10 20 30
SCALE IN MILES
N
MADISON
ST. CHARLES
ST. LOUIS
ST LOUIS
EAST ST. LOUIS
CLINTON
ST. CLAIR
FRANKLIN
ILLINOIS
MONROE
JEFFERSON
RANDOLPH
JACKSON
MISSOURI
CAPE GIRARDEAU
UNION
ILLMO
ALEX-ANDER
SCOTT
STODDARD
DEXTER
MISS-ISSIPPI
WYATT
NEW MADRID
EAST PRAIRIE
LILBOURN JCT
NEW MADRID
MALDEN
GIDEON
TENNESSEE
ARKANSAS
TO TEXARKANA
1
SEE MAP NO. 2
rev. 2/15/79



rev. 2/15/79
rev. 2/23/79



rev. 2/15/79
rev. 2/23/79



BILLING CODE 7035-01-C

rev. 3/14/78

St. Louis Southwestern Railway Co.

Description of Lines

Pursuant to the regulations of the Interstate Commerce Commission (49 CFR 1121.21), the following is a description of lines of the St. Louis Southwestern Railway Company as shown on the system diagram map:

Lines Anticipated To Be Subject of Abandonment Applications Within Three Years

Missouri

(1)(a) Designation of Line: Wyatt Branch.
(b) States in Which Located: Missouri.
(c) Counties in Which Located: Mississippi.
(d) Milepost Locations: 5.52 at or near Wyatt to 16.00 at or near East Prarie.
(e) Agency or Terminal Stations on the Line: Wyatt (milepost 5.9).

(Map No. 1)

(2)(a) Designation of Line: Caruthersville Branch.
(b) States in Which Located: Missouri.
(c) Counties in Which Located: Dunklin, Pemiscot.
(d) Milepost Locations: "W"–99.04 at or near Hornersville Junction to "R"–98.95 at or near Caruthersville.
(e) Agency or Terminal Stations on the Line: Rives (milepost "W"–93.4), Caruthersville (milepost "R"–98.95)

(Map No. 2)

(3)(a) Designation of Line: Blytheville Branch.
(b) States in Which Located: Arkansas, Missouri.
(c) Counties in Which Located: Greene, Mississippi, (in Arkansas); Dunklin (in Missouri).
(d) Milepost Locations: "P"–103.0 at or near Paragould to "P"–140.33 at or near Blytheville.
(e) Agency or Terminal Stations on the Line: Hornersville Junction (milepost "P"–125.8), Blytheville (milepost "P"–140.1).

(Map No. 2)

Arkansas

(1)(a) Designation of Line: Blytheville Branch.
(b) States in Which Located: Arkansas, Missouri.
(c) Counties in Which Located: Greene, Mississippi (in Arkansas); Dunklin (in Missouri).
(d) Milepost Locations: "P"–103.0 at or near Paragould to "P"–140.33 at or near Blytheville.
(e) Agency or Terminal Stations on the Line: Hornersville Junction (milepost "P"–125.8), Blytheville (milepost "P"–140.1).

(Map No. 2)

(2)(a) Designation of Line: Gillett Branch.
(b) States in Which Located: Arkansas.
(c) Counties in Which Located: Arkansas.
(d) Milepost Locations: 262.0 at or near Indiana to 268.10 at or near Gillett.
(e) Agency or Terminal Stations on the Line: Gillett (milepost 267.8).

(Map Nos. 2 and 3)

[AB 39 (SDM)]
[FR Doc. 79-11752 filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 217 (Sub-23TA), filed February 28, 1979. Applicant: POINT TRANSFER, INC., 5075 Navarre Road S.W., Box 1441, Station C, Canton, Ohio 44708. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Building, Pittsburgh, PA 15219. *Iron and steel articles and materials, equipment, machinery and supplies used in the manufacture of iron and steel articles* (1) Between Bucks County and Cambria County, PA on the one hand, and, on the other, points and places in IL, IN, KY, MI, OH, and WV (2) Between Cuyahoga, Lorain, Mahoning, Stark and Trumbell Counties, OH on the one hand, and, on the other, points and places in IL, IN, KY, MI, PA, and WV (3) Between Allegheny and Westmoreland Counties, PA on the one hand, and, on the other, points and places in IL, KY and MI (4) Between Cook and Will Counties, IL on the one hand, and, on the other points and places in IN, KY, MI, those in PA east of U.S. Highway 219 and those in WV south of U.S. Highway 50 (5) Between Lake County, IN on the one hand, and, on the other, points and places in IL, KY, MI, those in PA east of U.S. Highway 219 and those in WV south of U.S. Highway 50. Restriction: Restricted to traffic originating at or destined to facilities of United States Steel Corporation. Supporting shipper(s): United States Steel Corp., 600 Grant St., Room 568, Pittsburgh, PA 15230. Send protests to: Frank L. Calvary, DS, CC, 220 Federal Bldg., 85 Marconi Blvd., Columbus, OH 43215.

MC 8457 (Sub-9TA), filed March 16, 1979. Applicant: MILWAUKIE TRANSFER & FUEL CO., P.O. Box 522, Clackamas, OR 97015. Representative: Larry Smart, 419 N. W. 23rd Avenue, Portland, OR 97210. *Iron, iron and steel articles, and steel pipe* between points in WA, OR, CA, and ID, for 180 days. Supporting shipper(s): There are seven shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 13087 (Sub-49TA), filed March 8, 1979. Applicant: STOCKBERGER TRANSFER & STORAGE, INC., 524 Second Street, S.W., Mason City, IA 50401. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Meats, meat products, meat byproducts, and articles distributed by meat-packing houses, as described in Sections A, C, and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* between the facilities of Lauridsen Foods, Inc., at or near Britt, IA, on the one hand, and, on the other, points in IL, IN, KS, MI, MN, MO, NE, ND, SD and WI for 180 days. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Herbert W.

Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 26396 (Sub-231TA), filed March 13, 1979. Applicant: POPELKA TRUCKING CO., d/b/a/ THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Roofing materials from the facilities of CertainTeed Corporation at Shakopee, MN to points in CO and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 34027 (Sub-14TA), filed March 7, 1979. Applicant: GEETINGS, INC., P.O. Box 82, Pella, IA 50219. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. *Wood windows, sliding glass doors, wood folding doors, and partitions,* from the facilities of Pella Rolscreen Co., at or near Pella, IA to Minneapolis and Detroit Lakes, MN for 180 days. An underlying ETA seeks 90 days, authority. Supporting shipper: Pella Rolscreen Co., Pella, IA. Send protests to: Herbert W. Allen, DS, 518 Federal Bldg. ICC, Des Moines, IA 50309.

MC 35807 (Sub-95TA), filed March 2, 1979. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, P.O. Box 4313, Atlanta, GA 30302. Representative: Francis J. Mulcahy & Steven J. Thatcher, P.O. Box 4313, Atlanta, GA 30302. *Coin, currency and other items of unusual value* between Dothan, AL and points in AL, Clay, Early, Miller, Seminole, Decatur, Grady, Mitchell, Baker and Calhoun Counties, GA and Jackson, Calhoun, Liberty, Washington and Walton Counties, FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The First National Bank of Dothan, P.O. Box 809, Dothan, AL 36302. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 59367 (Sub-138TA), filed February 21, 1979. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Fort Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766,* from the facilities of Hygrade Food Products Corporation at Cherokee and Storm Lake, IA, to Tacoma, WA, Detroit, MI; and points in CA for 180 days. An underlying ETA Seeks 90 days authority. Supporting shipper(s): Hygrade Food Products Corporation, P.O. Box 4771, Detroit, MI 48219. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 61977 (Sub-15TA), filed March 20, 1979. Applicant: Zerkle Trucking Company, 2400 Eighth Avenue, Huntington, WV 25703. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Household Applicances, equipment, materials and supplies used in the manufacture, sale and distribution thereof, except commodities in bulk,* from Appliance Park and Louisville, KY to points in OH, PA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): General Electric Company, L. R. Crompton, Mgr-Traffic, Appliance Park, Bldg. 10, Louisville, KY 40225. Send protests to: ICC Room 3238 Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 63417 (Sub-193TA), filed March 10, 1979. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. BOX 13447, Roanoke, Virginia 24034. Representative: William E. Bain, same address as applicant. *New furniture and furniture parts,* from Appomattox, VA to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, NC 27360. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 67646 (Sub-79TA), filed March 6, 1979. Applicant: Hall's Motor Transit Company, 6060 Carlisle Pike, Mechanicsburg, PA 17055. Representative: John E. Fullerton, Esquire, 407 N. Front Street, Harrisburg, PA 17101. (1) Containers, container ends and closures, (2) commodities manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, and (3) materials, equipment and supplies used in the manufacture and distribution of containers, container ends and closures, between points in the United States in and east of MN, IA, AR, and LA. *Restrictions:* Restricted against the transportaion of commodities in bulk, in tank vehicles, and (2) restricted to shipments originating at or destined to facilities of Brockway Glass Company, Inc. Supporting Shipper(s): Brockway Glass Company, Inc., McCollough Avenue, Brockway, PA 15824. Send protests to: Charles F. Myers, DS, ICC, P.O. Box 869 Federal Square Station, Harrisburg, PA 17108.

MC 78276 (Sub-14TA), filed March 16, 1979. Applicant: MAZZEO & SONS EXPRESS, 311 South River Street, P.O. Box 691, Hackensack, NJ 07602. Representative: Fred L. Cardascia, 311 South River Street, P.O. Box 691, Hackensack, NJ 07602. Wearing apparel, on hangers, and in cartons, and, materials, supplies and equipment, used in the conduct of retail wearing apparel stores; from Secaucus, NJ to Albany, NY; Akron, OH; Baltimore, MD; Canton, OH; Carlisle, PA; Chicago, IL; Detroit, MI; Del Rio, TX; Elyria, OH; Huron, SD; Indianapolis, IN; Louisville, KY; No. Palm Beach, FL; Olympia, WA; Randall Park, OH; Reno, NV; Rockford, IL; San Antonio, TX; South Bend, IN; Youngstown, OH; Warren, OH; for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): Miller Wohl Company, Inc., 915 Secaucus Road, Secaucus, NJ 07094. Send protests to: Joel Morrows, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 93147 (Sub-5TA), filed March 9, 1979. Applicant: DELTA TRANSPORT CORPORATION, 80 James Street, Jersey City, NJ 07303. Representative: Paul Sheley, 72 Irene Street, Springfield, MA 01809. *Foodstuffs,* from the facilities of Ragu Foods, Inc., at or near Rochester, NY to points in CT, ME, MA, NJ, NH, RI, and VT. (except commodities in bulk, in tank vehicles) for 180 days, there is an underlying ETA, seeking 90 days authority. Supporting Shipper(s): Ragu Foods, Inc., 33 Benedict Place, Greenwich, CT 06830. Send protests to: Robert E. Johnston, DS, ICC, 9 Clinton St. Room 618, Newark, NJ 07102.

MC 100666 (Sub-445TA), filed March 19, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Such commodities as are dealt in, or used by, agricultural, industrial and construction machinery equipment dealers (except in bulk)* from the facilities of Massey-Ferguson, Inc., at or near Detroit, MI to points in AL, AR, FL, GA, KY, LA, MS, NM, NC, OK, SC, TN and TX, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting Shipper(s): Massey-Ferguson, Inc., 1901 Bell Avenue, Des Moines, Iowa 50315. Send protests to: Connie A. Guillory, T–9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 100666 (Sub-446TA), filed March 16, 1979. Applicant: MELTON TRUCK

LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Mr. Paul L. Caplinger (same address as applicant). *Agricultural, construction and industrial machinery, engines and equipment, merchandise as dealt in or used by lawn, garden and leisure product dealers* from the facilities of Allis-Chalmers Corp., at or near La Porte, IN and Milwaukee and Port Washington, WI to points in AL, AR, FL, GA, IL, IN, KY, LA, MI, MS, NM, NC, OH, OK, PA, SC, TN, TX, VA, and WV for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting Shipper(s): Allis-Chalmers Corporation, P.O. Box 512, Milwaukee, WI 53201. Send protests to: Connie A. Guillory, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 102567 (Sub-220TA), filed March 8, 1979. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 Northwest Fwy., Suite 130, Houston, TX 77040. *Chemicals, in bulk, in tank vehicles,* from Lake Charles, LA to points in the U.S. (except AK and HI), for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting Shipper(s): Continental Oil Company, P.O. Box 2197, 5 Greenway Plaza East, Houston, TX 77001. Send protests to: Connie A. Guillory, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 105006 (Sub-10TA), filed March 12, 1979. Applicant: L. L. SMITH TRUCKING, P.O. Box 566, Powell, WY 82435. Representative: Thompson and Kelley, 450 Capitol Life Center, Denver, CO 80203. (1) *Machinery, equipment, materials and supplies,* used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, between all points in AR, AZ, CA, ID, KS, LA, MO, NM, NV, OK, OR, TX, UT and WA (2) *Machinery, materials, equipment and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, between all points in CO, ID, MT, ND, NE, NM, NV, SD, UT and WY for 180 days. An underling ETA seeks 90 days authority. Applicant requests permission to tack Item 1 of this authority with the applicant's existing Sub 2 authority so as to be able to provide a non-radial "oilfield" service in all states west of the Mississippi River (except AK, HI, IA and MN). Applicant also requests the cancellation of any of its Sub 8TA authority to the extent that it is duplicated by a partial or total grant of the authority sought herein since all authority contained in the Sub 8TA is encompassed in the above requested authority.Supporting Shipper(s): There are 14 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: District Supervisor Paul A. Naughton, Rm 105 Federal Bldg., 111 South Wolcott, Casper, WY 82601.

MC 105007 (Sub-49TA), filed March 5, 1979. Applicant: MATSON TRUCK LINES, INC., 1407 St. John Avenue, Albert Lea, MN 56007. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. *Meat, meat products, meat by-products and articles distributed by meat packing houses (except hides and commodities in bulk)* from Ottumwa, IA to points in OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 106647 (Sub-364TA), filed January 31, 1979. Applicant: CLARK TRANSPORT COMPANY, INC., R.R. #1, Box 14c, Jct. Rtes. 83 & 30, Chicago Heights, IL 60411. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Motor vehicles, in truckaway service,* between Naperville, IL, on the one hand, and on the other, pts in MI and WI for 180 days. An underyling ETA has been granted. Supporting Shipper(s): Mazda Great Lakes, 2660 28th S.E., Grand Rapids, MI 49501. Send protests to: TA Annie Booker, 219 S. Dearborn St., Chicago, IL 60604.

MC 106707 (Sub-16TA), filed March 6, 1979. Applicant: ADAMS TRUCKING, INC., 1711 West Second Street, Webster City, IA 50595. Representative: Ronald D. Adams (Same as applicant). Such commodities as are dealt in, or used by, agricultural equipment industrial equipment and lawn and leisure products manufacturers and dealers (except commodities in bulk) between the facilities of, or used by, International Harvester Company at Canton, East Moline, Moline, and Rock Island, IL on the one hand, and, on the other, points in MN, ND, OH, SD and WI. Restricted to the transportation of traffic (a) originating at the facilities of, or utilized by, International Harvester Company named therein and destined to points in the states named therein, and (b) originating at points in the States named therein and destined to the facilities of, or utilized by, International Harvester Company named therein, except that the restrictions in (a) and (b) above shall not apply to traffic moving in foreign commerce, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): International Harvester Company, 401 N. Michigan Avenue, Chicago, IL 60608. Send protests to: Herbert W. Allen, DS, 518 Federal Bldg. ICC, Des Moines, IA 50309.

MC 107107 (Sub-474TA), filed March 1, 1979. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Avenue, Opa Locka, FL 33054. Representative: Ford W. Sewell, same address as applicant. *Frozen crab shells* from points in FL in and west of Columbia, Gilchrist, and Levy Counties to points in the United States in and east of the States of TX, OK, KS, NE, ND and SD for 180 days. Supporting Shipper(s): Posey Seafood & Crab Co., P.O. Box 294, Panacea, FL. Send protests to: Donna M. Jones, TA, ICC, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 107496 (Sub-1195TA), filed February 27, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (Same as applicant). *Liquified petroleum gas (LPG),* in bulk, in tank vehicles, from West Memphis, AR to points in TN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Northern Propane Gas, 2223 Dodge Street, Omaha, NE. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107496 (Sub-1196TA), filed February 26, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same as applicant). *Resins,* in bulk, in tank vehicles from Valley Park, MO to points in GA, FL, NC and WA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ashland Chemical Company, P.O. Box 2219, Columbus, OH 43216. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107496 (Sub-1197TA), filed March 13, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (Same as applicant). *Lard, grease, and tallow, in bulk, in tank vehicles,* between Sioux Falls, SD and Estherville, IA, on the one hand, and, on the other hand, points in IL, IA, MN, MO, NE and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting

Shippers(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107496 (Sub-1198TA), filed March 20, 1979. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (Same as applicant). *Propane gas, in bulk,* from West Memphis, AR to points in TN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shippers(s): Northern Propane Gas Company, 2223 Dodge Street, Omaha, NE 68102. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 108067 (Sub-17 TA), filed March 7, 1979. Applicant: AL ZEFFIRO TRANSFER & STORAGE, INC., P.O. Box 296, Murrysville, PA 15668. Representative: William C. Rank, 2154 Greensburg Road, New Kensington, PA 15668. *Iron and steel products,* from the facilities of United States Steel Corp. located at or near Braddock, Clairton, Duquesne, Dravosburg, Homestead, Irvin, Johnstown, McKeesport, McKees Rocks, Pittsburgh, Vandergrift, PA to points in IL, IN, the lower peninsula of MI (on and south of Ocean, Newaygo, Mecosta, Isabella, Midland and Bay counties) and OH, for 180 days. An underlying ETA seeks authority for 90 days. Supporting Shippers(s): United States Steel Corporation, 600 Grant Street, Pittsburgh, PA 15230. Send protests to: John J. England, D/S, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 108067 (Sub-18TA), filed March 7, 1979. Applicant: AL ZEFFIRO TRANSFER & STORAGE, INC., P.O. Box 296, Murrysville, PA 15668. Representative: William C. Rank, 2154 Greensburg Road, New Kensington, PA 15668. *Iron and steel products,* from Gary, IN to points in NY, OH and PA, for 180 days. Supporting Shippers(s): United States Steel Corporation, 600 Grant Street, Pittsburgh, PA 15230. Send protests to: John J. England, D/S, ICC, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 109397 (Sub-445TA), filed March 5, 1979. Applicant: TRI STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. *Refined copper,* from Hurley, NM, to Garland, Houston and Galveston, TX; Dowagiac and Greenville, MI; Reuters and East Alton, IL; Milwaukee, WI; Indianapolis, IN; Wynne, AR; Decatur, Lister Hill and Roberta, AL; Pine Hall, NC; Aquashicola, PA; and Los Angeles County, CA for 180 days. Supporting Shipper(s): Kennecott Copper Corporation, 1055 West North Temple, Salt Lake City, UT 84116. Send protests to: DS John V. Barry, 600 Federal Bldg., 911 Walnut, Kansas City, MO.

MC 109397 (Sub-446TA), filed 3/19/79. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. *Lumber, lumber mill products and wood products,* from the facilities of Potlatch Corporation in Idaho, to points in IN, MI, & OH for 180 days. An underlying ETA seeks 90 days. Supporting Shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: DS John V. Barry, 600 Fed Bldg., 911 Walnut, Kansas City, MO 64106.

MC 111967 (Sub-5TA), filed March 2, 1979. Applicant: CADDELL TRANSIT CORPORATION, P.O. Box 146, Lawton, OK 73501. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Gas Oil,* from Abilene, TX, to Duncan, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pride Refining, Inc., P.O. Box 3232, Abilene, TX 79604. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 113106 (Sub-70TA), filed 3–21–79. Applicant: THE BLUE DIAMOND COMPANY, 4401 E. Fairmount Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, Esq., 1030 15th St., N.W., Washington, DC 20005. (a) *Containers, container ends and closures;* (b) *Commodities manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, and* (c) *material, equipment and supplies used in the manufacture and distribution of containers, container ends and closures,* between points in the United States in and east of MN, IA, MO, AR and LA. RESTRICTION: The above authority is restricted (1) against the transportation of commodities in bulk, in tank vehicles, and (2) to apply only on shipments originated at or destined to a Brockway Glass Company, Inc. facility. Supporting Shipper(s): J. W. Pennington, Brockway Glass Company, Inc., McCullough Ave., Brockway, PA 15824. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 114416 (Sub-10TA), filed March 14, 1979. Applicant: WESTERN TRANSPORT CRANE & RIGGING, Route 11, Grant Creek Road, Missoula, MT 59801. Representative: Gary Nelson (same address as Applicant). *Contractors', sawmill and mining machinery, materials, equipment and supplies* between points in AZ, CA, CO, ID, KS, MT, ND, NE, NM, NV, OR, OK, SD, TX, UT, WA and WY, restricted to the transportation of shipments originating at or destined to the facilities of Washington Corporations and it's subsidiaries, Washington Construction Co. and Modern Machinery Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Washington Construction Co., 500 Taylor Ave., P.O. Box 8989, Missoula, MT 59807. Modern Machinery Co., Inc., Terminal Box 2686, East 4412 Trent Ave., Spokane, WA 99220. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Bilings, MT 59101.

MC 114457 (Sub-483TA), filed March 5, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *Plastic containers* from Kentwood and Grand Rapids, MI to Lenexa, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Continental Group, Inc., Continental Plastics Industries, 633 Third Avenue, New York, NY 10017. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-484TA), filed March 7, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *Fibreboard containers* from St. Louis, MO to points in WI, MN, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Container Corporation of America, 500 East North Avenue, Carol Stream, IL 60187. SEND PROTESTS TO : Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-485TA), filed March 15, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *Glass containers* from Dunkirk, IN to La Crosse, WI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): G. Heileman Brewing Co., Inc., 925 South Third Street, La Crosse, WI 54601. SEND PROTESTS TO : Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-486TA), filed March 1, 1979. Applicant: DART TRANSIT

COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *Clock movements, pulpboard and fibreboard backs, paints, stains, varnishes, and printed matter* from Chicago, IL to Traverse City, MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Burwood Products Company, 807 Airport Access Road, Traverse City, MI 49684. SEND PROTESTS TO : Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-487TA), filed March 1, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *Plastic containers* from Green Bay, WI to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Midway Can Company, Traffic Manager, 2341 Hampden Avenue, St. Paul, MN 55114. SEND PROTESTS TO : Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 114457 (Sub-488TA), filed March 6, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills. Same address as applicant. *(1) Alcoholic beverage; and (2) such commodities as are dealt in by wholesale distributors of alcoholic beverages* from Edison, Jersey City, Lodi and Moonachie, NJ to St. Paul, MN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Johnson Bros. Wholesale Liquors, 2341 University Avenue, St. Paul, MN 55114. SEND PROTESTS TO : Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 115826 (Sub-409TA), filed February 22, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Foodstuffs*, from Dallas, TX and its commercial zone to Albuquerque, NM; Denver, CO and their commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nobel, Inc., 1101 West 48th Ave., Denver, CO. Send protests to: D/S Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-423TA), filed March 12, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Boards, blocks, or panels NOI, honeycomb cellular construction, expanded or compressed; metal;* fibreboard or paper impregnated with other materials, or not impregnated with other materials, corrugated or O/T corrugated, (1) from facilities of Hexcel Corporation, La Mirada, CA to Nogales, AZ; (2) from Casa Grande AZ to points in WA, for 180 days. An ETA has been filed. Supporting shipper(s): Hexcel Corporation, 11711 Dublin Blvd., Dublin, CA 94566. Send protests to: D/S Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 116077 (Sub-405TA), filed March 5, 1979. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder, 4550 Post Oak Place/Suite 300, Houston, TX 77027. *Synthetic resins*, in bulk, in tank vehicles from the plantsite of E.I DuPont DeNemours & Co. at Orange, TX to the state of GA. Supporting shipper(s): E. I. DuPont DeNemours & Co., 1007 Market St., Wilmington, DE 19898. Send protests to: John F. Mensing, ICC, 515 Rusk Ave., 8610 Federal Bldg., Houston, TX 77002.

MC 116077 (Sub-406TA), filed February 26, 1979. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder, 4550 Post Oak Place/Suite 300, Houston, TX 77027. *Well packing fluids, viz: Calcium bromide*, in bulk, in tank vehicles from Gulfport, MS to Cameron, Intracoastal City, Morgan City, Berwick, Dulae, Houma and Venice, LA and Freeport, Galveston, Port O'Conner and Beaumont, TX. Supporting shipper(s): Velsicol Chemical Corp., 341 E. Ohio St., Chicago, IL 60611. Send protests to: John F. Mensing, ICC, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 116077 (Sub-407TA), filed March 13, 1979. Applicant: DSI TRANSPORTS, INC., 4550 One Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder, 4550 One Post Oak Place/Suite 300, Houston, TX 77027. *Adipic acid*, in bulk, in tank vehicles from South Bay City, TX to Avon Lake, OH and Neville Island, PA. An underlying ETA seeks 90 days authority. Supporting shipper(s): Celanese Chemical Co., Inc., P.O. Box 47320, Dallas, TX 75247. Send protests to: John F. Mensing, ICC, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 116947 (Sub-68TA), filed March 6, 1979. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street SW., Atlanta, GA 30310. Representative: William Addams, P.O. Box 720434, Atlanta, GA 30328. *Contract Carrier:* Irregular routes: *Glues, adhesives, caulks and specialty chemicals, in containers packed in cartons, 5 gallon pails and 55 gallon drums, empty plastic containers, 1 gallon or less, in cartons,* from the facilities of Franklin Chemical Industries, Inc. at or near Columbus, OH to points and places in TX, AR, GA, MO, NC, OK, TN and FL. (2) *Materials and supplies (except commodities in bulk) used in the manufacture and distribution of glues, adhesives, caulks and specialty chemicals* from points in PA, SC, NJ and MA to the facilities of Fraklin Chemical Industries, Inc., at or near Columbus, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shippers(s): Franklin Chemical Industries, Inc., 2020 Bruck Street, P.O. Box 07802, Columbus, OH 43207. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 117386 (Sub-8TA), filed March 5, 1979. Applicant: L. B. TRANSPORT, INC., Buffalo Center, IA 50424. Representative: Kenneth F. Dudley, P.O Box 279, Ottumwa, IA 52501. Lard, grease, and tallow, in bulk, in tank vehicles, from the facilities utilized by John Morrell & Co. at Estherville, IA, to points in IL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shippers(s): John Morrell & Co., 200 S. LaSalle St., Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 117786 (Sub-52TA), filed March 12, 1979. Applicant: Riley Whittle, Inc., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Meats, meat products and meat by-products, as described in Section A of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides, and commodities in bulk, in tank vehicles), in mechanically refrigerated equipment,* from the facilities of Kahn's and Company at Cincinnati, OH to points in CA and AZ for 180 days. SUPPORTING SHIPPER: Kahn's and Company, 3241 Spring Grove Ave., Cincinnati, OH 45225. SEND PROTESTS TO: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 118457 (Sub-28TA), filed March 16, 1979. Applicant: ROBBINS DISTRIBUTING CO., INC., 11104 Becher St., West Allis, WI 53227. Representative: David V. Purcell, 111 E. Wisconsin Ave., Milwaukee, WI 53202. *Pork products*, in vehicles equipped with

mechanical refrigeration, from Dayton and Washington Court House, OH and Bloomington, IL to Green Bay and Plymouth, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): World Wide Sales, Inc., 710 Eastern Ave., Plymouth, WI 53073.Send protests to: Gail Daugherty, TA, ICC. U.S. Federal Bldg., 517 East Wisconsin Ave., Room 619, Milwaukee, Wisconsin 53202.

MC 119567 (Sub-15TA), filed February 28, 1979. Applicant: F. H. McClure and R. V. Estell d/b/a Empire Transport, 2007 Overland Road, Boise, ID 83705. Representative: Kenneth G. Bergquist, P.O. Box 1775, Boise, ID 83701. *Silica sand,* from Gem County, ID to points in King County, WA, in common carriage, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Wedron Silica Division—Pebble Beach Corporation, P.O. Box 651, Emmett, ID 83617. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 119767 (Sub-354TA), filed March 2, 1979. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Prepared flour mixes and frosting mixes (except in bulk), from the facilities of Chelsea Milling Co. at or near Chelsea, MI to Bismarck and Fargo, ND, Albert Lea, Minnetonka, Thief River Falls and points in the Minneapolis-St. Paul Commercial Zones, MN; Appleton, Green Bay, LaCrosse, Little Chute, Madison, Marshfield, Milwaukee and Stevens Point, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chelsea Milling Co., Chelsea, MI 48118. Send protests to: Gail Daugherty, TA, ICC, U.S. Federal Bldg., 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 119767 (Sub-355TA), filed March 6, 1979. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *Corn sugar,* except in bulk, from Clinton, IA to Ripon, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heritage Wafers Ltd., Vermont St., Industrial Park, Ripon, WI 54971. Send protests to: Gail Daugherty, TA, ICC, U.S. Federal Bldg., 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 123387 (Sub-14TA), filed March 8, 1979. Applicant: E. E. HENRY, 1923 Sparrow Road, Chesapeake, VA 23320. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Bananas,* from Norfolk, VA and its commercial zone to points in AL, CT, CA, DE, GA, IL, IN, KS, KY, MD, MA, MI, MO, NE, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI and the DISTRICT OF COLUMBIA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Best Banana Company, 3616 E. Virginia Beach Blvd., Norfolk, Virginia 23502. Send protests to: Paul D. Collins, DS, ICC, Rm 10–502 Federal Bldg. 400 North 8th Street, Richmond, VA 23240.

MC 124887 (Sub-69TA), filed February 20, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *LUMBER* from Livingston Parish and Tangipahoa Parish, LA to points in AL, FL, GA, MS, NC, SC and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stringfellow Lumber Company, P.O. Box 1117, Birmingham, AL 35202; Buffalo Mills Lumber Company, Inc., P.O. Box 976, Amite, LA 70422. Send protests to: G. H. Fauss, Jr., DC, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124896 (Sub-85TA), filed March 19, 1979. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Bananas* for Best Banana Company from Portsmouth, VA to points in U.S. in and east of ND, SD, IA, MO, AR, and MS, for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting shipper(s): Best Banana Company, 301 First Street, Portsmouth, VA. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125997 (Sub-10TA), filed March 9, 1979. Applicant: L. C. FOESCH, d/b/a FOESCH TRANSFER LINE, Box 434, Shawano, WI 54166. Representative: Michael S. Varda, 121 S. Pinckney St., Madison, WI 53703. Contract carrier; irregular routes; *Plywood products,* from the facilities of Weber Veneer & Plywood Corp. at or near Shawano, WI to points in the Chicago, IL Commercial Zone, and on return, *equipment, materials, (except lumber), and supplies,* used or useful in the manufacture or distribution of the named commodities, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Weber Veneer & Plywood Corp., Box 71, Shawano, WI 54166. Send protests to: Gail Daughtery, TA, ICC, U.S. Federal Building, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 127187 (Sub-15TA), filed March 6, 1979. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Blvd., P.O. Box 492, Fergus Falls, MN 56537. Representative: William J. Gambucci, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58107. *Agricultural chemicals,* from Muscatine, IA to points in MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Monsanto Company, 800 North Lindbergh Blvd., Building AA3E, St. Louis, MO 63166. Send protests to: DS, ICC, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 128117 (Sub-35TA), filed March 14, 1979. Applicant: NORTON-RAMSEY MOTOR LINES, INC., P.O. Box 896, Hickory, NC 28601. Representative: Francis J. Ortman, 7101 Wisconsin Ave., Suite 605, Washington, DC 20014. *New furniture* from Appomattox, VA to points and places in AR, LA, OK, TX, NM, AZ, CA, NV and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, NC 27360. Send protests to: D/S Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 128927 (Sub-3TA), filed March 19, 1979. Applicant: MARTIN TRUCKING COMPANY, INC., P.O. Box 118, Wilton, WI 54670. Representative: James A. Spiegel, 6425 Odana Road, Madison, WI 53719. *Malt beverages,* from St. Paul, MN to points in Monroe and Waukesha Counties, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): (1) Donn Kerr, Inc., 651 N. Ave., Hartland, WI 53029; (2) S & S Distributing, Inc., 918 Hoeschler Drive, Sparta, WI 54656; (3) Rasmussen's Bottled Beverage, Inc., 204 Milwaukee St., Sparta, WI 54656; (4) Hellman Dohms Distributors, Inc., 119 S. Rusk Ave., Sparta, WI 54656. Send protests to: Gail Daugherty, TA, ICC, U.S. Federal Bldg., 517 East Wisconsin Ave. Room 619, Milwaukee, WI 53202.

MC 133167 (Sub-4TA), filed March 19, 1979. Applicant: JOHN R. RAWLS TRUCKING CO., INC., P.O. Box 174, Capron, VA 23829. Representative: Carroll B. Jackson, 1810 Vincennes Road, Richmond, VA 23229. *Wood residuals, lumber, lumber mill products and particleboard,* (1) between the facilities of Union Camp Corporation located near Franklin, VA, Waverly, Va,

Seaboard, NC and Smithfield, NC on the one hand, and on the other, points in DE, MD, NC, NJ, PA, SC, TN, VA, WV and DC, and (2) between points in NC on the one hand, and, on the other, points in VA. Restriction: Service in (2) above is restricted to wood residuals. Supporting Shipper(s): Union Camp Corporation, 1600 Valley Road, Wayne, New Jersey 07470. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 N. 8th St. Richmond, Va. 23240.

MC 133566 (Sub-132TA), filed March 7, 1979. Applicant: GANGLOFF & DOWNHAM TRUCKING COMPANY, INC., P.O. Box 479, Logansport, IN 46947. Representative: Thomas J. Beener, Suite 4959, One World Trade Center, New York, NY 10048, (1) Meat and the usual meat description: (2) foodstufs when moving in mixed loads with articles listed in (1) above from the facilities of Oscar Mayer & Co., Inc., at or near Madison, WI to Goodlettsville, TN, for 180 days. SUPPORTING SHIPPER: Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. SEND PROTESTS TO: Beverly J. Williams, TA ICC, 429 Federal Bldg., 46 East Ohio Street, Indianapolis, IN 46204.

MC 134286 (Sub-97TA), filed March 15, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (Same address as applicant). *Apple juice and sweet cider in cans and bottles (except commodities in bulk),* from the facilities of Speas Company at or near Fremont, MI, to Anaheim and San Francisco, CA; Yakima, WA; Kansas City, MO; Rogers, AR; Minneapolis, St. Paul, and Hopkins, MN; Denver, CO; Oklahoma City, OK; and Paris and Dallas, TX, and points in their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Brad Geeting, Speas Company, 502 Connie Avenue, Fremont, MI 49412. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 134286 (Sub-98TA), filed March 15, 1979. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert. Same address as applicant. *Cotton bags (except in bulk),* (1) from the facilities of Ripple Twist Mills at or near Reading, PA, to the facilities of C & K Manufacturing at or near Bay Village, OH, and (2) from Bay Village, OH, to points in IN, IL, IA, MO, NE, KS, OK, TX, and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Tim Carroll, C & K Manufacturing, 27360 W. Oviatt, Bay Village, OH 44140. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 134387 (Sub-62TA), filed March 5, 1979. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, CA 90280. Representative: Patricia M. Schnegg, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Containers and closures,* between points in CA, UT and NV, for 180 days. Supporting Shipper(s):Continental Can Company, U.S.A., 155 Bovet Road, San Mateo, CA 94402. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles, Los Angeles, CA 90012.

MC 134387 (Sub-63TA), filed March 5, 1979. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, CA 90280. Representative: Patricia M. Schnegg, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Containers and closures,* from Los Angeles and Solano Counties, CA to points in OR, MT, WA, AZ, NV, and UT, for 180 days. Supporting Shipper(s): Owens-Illinois, 1700 S. El Camino Real, P.O. Box 5244, San Mateo, CA 94402. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 134477 (Sub-331TA), filed March 19, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs (except in bulk)* from Independence, MO to points in IL, IN and MI, restricted to the transportation of traffic orignating at the facilities of Commercial Distribution Center, Inc. at or near Independence, MO and destined to the indicated destinations, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPERS(S): Commercial Distribution Center, Traffic Manager, 16500 East Truman Road, Independence, MO 64051. SEND PROTESTS TO: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135046 (Sub-16TA), filed March 21, 1979. Applicant: ARLINGTON J. WILLIAMS, Inc., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Sinks, worktables, cocktail units, ice chests and related fixtures and supplies,* between the plantsite of Metal Masters Foodservice Co., Inc. at Smyrna, DE, on the one hand, and, on the other, points in CO, FL, GA, IL, KS, LA, MD, MO, NJ, NY, NC, SC, TN, TX and Philadelphia, PA, for 90 days. Supporting shipper(s): Harold F. Knotts, Sr., Metal Masters Foodservice Co., Inc., 655 W. Glenwood Ave., Smyrna, DE 19977. Send protest to: W. L. Huges, DS, ICC 1025 Federal Bldg., Baltimore, MD 21201.

MC 135197 (Sub-21TA), filed March 2, 1979. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 63461. Representative: Herman W. Huber, Attorney, 101 East High Street, Jefferson City, MO. 65101. *Liquid fertilizer solutions and dry bulk fertilizer,* from the plantsite and storage facilities of Mississippi Valley Chemical Co., at or near Palmyra, MO to all points in IL and IA, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Mississippi Valley Chemical Company, Box 268, Palmyra, MO. 63461. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO. 64106.

MC 138157 (Sub-121TA), filed March 2, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. Southwest Motor Freight, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn. Same address as applicant. *Wheels and parts thereof* from the facilities of Duke's Wheels at Riverside, CA to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper(s): Duke's Wheels, 6780 Central Avenue, Riverside, CA 92504. Send protest to: Glenda Kuss, TA, ICC, Suite A–442 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-122TA), filed March 5, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn. (Same address as applicant). *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses (except frozen commodities and commodities in bulk),* from the facilities of the Clorox Company, at Houston, TX to points in AR, LA, an OK, for 180 days. Supporting Shipper(s): The Clorox Company, 1221 Broadway, Oakland, CA 94612. Send protests to: Glenda Kuss, TA, ICC, Suite A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-123TA), filed March 5, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (Same address as applicant). *Cleaning and building maintenance supplies and*

materials, and materials, equipment and supplies used in the manufacture, sale and distribution of the above commodities, from the plantsites and facilities of Purex Corporation at or near Philadelphia, PA to points in and east of ND, SD, NE, KS, MO, AR, and LA, for 180 days. NOTE: Restricted against the transportation of commodities in bulk and to traffic originating at the facilities of Purex Corporation. Supporting shipper(s): Purex Corporation, 24600 S. Main St., Carson, CA 90749. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-124TA), filed March 15, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC. d./b./a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (Same address as applicant). *Adhesives, glues, pastes, cleaning, preserving, and sealing compounds, and products, solvents, stains and related installation supplies and equipment, plastic carpeting, carpet strip and moldings and related floor installation supplies and equipment (except commodities in bulk),* from the plantsites of Roberts Consolidated Industries at Kalamazoo, MI and Dayton, OH to all points in and east of ND, SD, NE, CO, OK and TX, for 180 days. Restricted to traffic originating at the facilities of Roberts Consolidated Industries at Kalamazoo, MI and Dayton, OH. Supporting shipper(s): Roberts Consolidated Industries, 600 North Baldwin Blvd., City of Industry, CA 91749. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-125TA), filed March 15, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC. d./b./a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (Same address as applicant). *Chemicals and related materials, equipment and supplies (except in bulk),* from points in TX and LA to Los Angeles, Tustin, Canoga Park, Riverside, Fresno and Union City, CA; Phoenix and Tucson, AZ; Denver and Grand Junction, CO; Kent, WA; and Portland, OR, for 180 days. Restricted to traffic destined to the facilities of Foremost McKesson, Inc. Supporting shipper(s): Foremost-McKesson, Inc., Crocker Plaza, One Post St., San Francisco, CA 94104. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 139457 (Sub-15TA), filed March 6, 1979. Applicant: G. L. Skidmore d./b./a. JELLY SKIDMORE TRUCKING CO., P.O. Box 38, Paris, TX 75460. Representative: Paul D Angenend, P.O. Box 2207, Austin, TX 78768. *Contract carrier, irregular routes, Frozen bakery goods,* from Downers Grove, IL to points in the Commercial Zone of Dallas, TX, under a continuing contract with Pepperidge Farm, Inc., for 180 days. Supporting shipper: Pepperidge Farm, Inc., 595 Westport Ave., Norwalk, CT 06856. Send Protests to: Opal M. Jones, TA, ICC, 1100 Commerce St. Rm 18612, Dallas, TX 75242.

MC 139577 (Sub-33TA), filed March 20, 1979. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, Friesland, WI 53935. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Foodstuffs, canned and preserved,* from the facilities of Heinz USA, Div. of H. J. Heinz Co. at Iowa City and and Muscatine, IA to points in MN & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, Div. of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Gail Daugherty, TA, ICC, U.S. Federal Building, 517 East Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 139587 (Sub-16TA), filed March 7, 1979. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, Fort Scott, KS 66701. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Cheese, cheese products and synthetic cheese,* from facilities of L. D. Schreiber Cheese Co., Inc., in Barry, Jasper, Lawrence and Newton Counties, MO to points in AL, AR, GA, FL, KY, LA, MS, NC, SC, & TN.; common, irregular, 180 days; 90 day ETA granted; SUPPORTING SHIPPER: L. D. SCHREIBER CHEESE CO., Green Bay, WI. 54305; SEND PROTESTS TO: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202.

MC 140337 (Sub-5TA), filed March 2, 1979. Applicant: JESSE SHERMAN, d.b.a. SHERMAN TRAILER TRANSPORTATION, P.O. Box 3343, Cheyenne, WY 82001. Representative: Jesse Sherman (Same address as applicant). *Mobile homes,* in initial and secondary movements, between points in WY, CO, ID, MT, NE, ND, SD, UT, KS and NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Redman Homes, Inc., 3842 Redman Drive, Ft. Collins, CO 80524. Send protests to: D/S Paul A. Naughton, RM 105 Federal Bldg & Crt House, 111 South Wolcott, Casper, WY 82601.

MC 140567 (Sub-3TA), filed March 15, 1979. Applicant: EDWARD L. NORTHINGTON, d.b.a. ED NORTHINGTON TRUCKING, P.O. Box 51, Gattman, MS 38844. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Stone, crushed stone, riprap stone and construction aggregates,* in dump vehicles from points in Colbert County, AL, to points in TN, and from points in Hardin and Maury Counties, TN, to points in MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Stone & Slag Co., 415 Comet Dr., Jackson, MS 39206. Mississippi Aggregate Co., Inc., 1504 N. Mill St., Jackson, MS 39201. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 140717 (Sub-16TA), filed March 9, 1979. Applicant: JULIAN MARTIN, INC., Highway 25, S., P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Contract carrier;* irregular routes *Meat, meat products and meat by-products and articles distributed by meat packing houses,* as described in Section A of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or storage facilities utilized by Royal Packing Company at or near National Stockyards, IL, and St. Louis, MO, to Boston, MA: Hartford, CT; New York, NY; Philadelphia, PA; Memphis, TN; and Miami, FL, for 180 days. Supporting Shipper(s): Royal Packing Company, P.O. Box 156, National Stockyards, National City, IL 62071. Send protests to: William H. Land, Jr., D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 140717 (Sub-17TA), filed March 5, 1979. Applicant: JULIAN MARTIN, INC., Highway 25, S., P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. *Contract carrier; irregular routes; Fresh meats and packing house products,* from Cedar Rapids, IA, to points in AL, AR, GA and TN, for 180 days. Supporting Shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: William H. Land, Jr., D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 141197 (Sub-32TA), filed March 7, 1979. Applicant: FLEMING-BABCOCK,

INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Animal and poultry feed and ingredients,* in bulk, from the facilities of Ralston Purina Company in Kansas City, MO to points and places to KS, OK, and AR, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Ralston Purina Company, 2334 Rochester, Kansas City, MO 64120. Send protests to: Vernon V. Coble, D/S, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 141776 (Sub-38TA), filed March 21, 1979. Applicant: FOODTRAIN, INC., Spring & South Center Sts., Ringtown, PA 17967. Representative: Pauline E. Myers, Suite 407 Walker Bldg. 734 15th St., NW, Washington, DC 20005. *Dry spaghetti and macaroni products* (except in bulk), from the facilities of C. F. Mueller Company at or near Jersey City, NJ, to points in IL, IN, MI, and OH, for 180 days. An underlying ETA seeking 90 days authority has been sought. Supporting shipper(s): C. F. Mueller Company, 180 Baldwin Ave., Jersey City, NJ 17306. Send protests to: ICC, Wm. J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, PA 19106.

MC 142096 (Sub-6TA), filed March 20, 1979. Applicant: MILLER BROS. TRUCKING CO., INC., 4100 W. Mitchell St., Milwaukee, WI 53215. Representative: James A. Spiegel, 6425 Odana Rd., Madison, WI 53719. *Empty metal containers* from Rockford, IL to Augusta, Belgium, Clyman, Green Bay, Milwaukee, New Holstein, and Union Grove, WI for 180 days. An underlying ETA seeks 90 days authortiy. Supporting shipper(s): National Can Co., 8108 W. Higgins Rd., Chicago, IL 60631. Send protests to: Gail Daugherty, TA, ICC, U.S. Federal Building, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 142827 (Sub-5TA), filed February 23, 1979. Applicant: DEMARLIE TRUCKING, INC., P.O. Box 338, Reynolds, IL 61279. Representative: Robert H. Levy, 29 South LaSalle Street, Chicago, IL 60603. *Meats, meat products, meat by-products and articles distributed by meat packing houses,* from the facilities of Illini Beef Packers, Inc. at Joslin, IL to AL, GA, NC, and SC, for 180 days. Supporting shipper(s): Illini Beef Packers, Inc., P.O. Box 245, Geneseo, IL 61254. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 143346 (Sub-5TA), filed March 15, 1979. Applicant: BILLY JACK HOLLINGSWORTH DBA HOLLINGSWORTH GRAIN & TRUCKING, P.O. Box 384, Sanger TX 76266. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Motor fuels, heating fuels, and furnance oil,* in bulk in tank vehicles, from points in TX to points in AZ, CO, and NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): B M H Oil Company, Inc. P.O. Box 5365, Wichita Falls, TX 76307. Send protests to: Martha A. Powell, TA, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 143417 (Sub-3TA), filed February 28, 1979. Applicant: FLASH INTERSTATE DELIVERY SYSTEM, INC., 4711 West 16th Street, Cicero, IL 60650. Representative: Barry Roberts, 888 17 Street, NW., Washington, DC 20006. *Automtive Parts, Engine Driving Gear Assemblies, Internal Combustion Engines and Transmissions,* from the plant site of Mack Trucks, Inc., Hagerstown, MD to Chicago, IL, for 180 days, restricted to traffic having a subsequent movement by rail in trailer on flatcar service. Supporting Shippers: Mack Trucks, Inc., P.O. Box 4117, Hayward, CA 94540. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144026 (Sub-4TA), filed March 16, 1979. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, SC 29550. Representative: Galland, Kharasch, Calkins & Short, Attn: R. L. McGeorge, 1054 31st Street, NW, Washington, DC 20007. *Contract Carrier:* irregular routes: (*1*) *Paper and paper articles* from the facilities of Sonoco Products Company at or near Hartsville, SC to points in FL; (*2*) *Wastepaper* from points in FL to the facilities of Sonoco Products Company at or near Hartsville, SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Sonoco Products Company, N. 2nd St., Hartsville, SC 29550. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 144117 (Sub-32TA), filed March 21, 1979. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Warren W. Wallin, Sullivan & Associates, Ltd., 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Plumbing Fixtures and Fittings* from Brownwood, TX to points in IL, IN, KY, OH, MI, WV, PA, NY, MD, MA, CT, NJ, DE, GA, and FL, for 180 days. Supporting Shipper(s): Kohler Company, Inc., P.O. Box A, Kohler, WI 53044. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 144117 (Sub-33TA), filed March 21, 1979. Applicant: T.L.C. LINES, INC., P.O. Box 1090, Fenton, MO 63026. Representative: Warren W. Wallin, Sullivan & Associates, Ltd., 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. (1) *Raw Iron Castings* from Kohler, WI to Los Angeles, CA, and (2) *Crankshafts and machined castings* Los Angeles, CA to Kohler, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shippers:Kohler Company, Inc., P.O. Box A, Kohler, WI 53044. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 144527 (Sub-4TA), filed February 14, 1979. Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 North Dearborn Street, Chicago, IL 60602. Representative: Patrick H. Smyth, Suite 521, 19 South LaSalle Street, Chicago, IL 60603. *Contract-irregular; Meats, packing-house products and commodities used by packing-houses* from the facilities of Swift and Company at Rochelle, St. Charles, and Bradley, IL to NY, for 180 days. Supporting Shipper(s): Swift and Company, 115 West Jackson Boulevard, Chicago, IL 60604. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144557 (Sub-7TA), filed March 2, 1979. Applicant: HUDSON TRANSPORTATION, INC., P.O. Box 847, Troy, AL 36081. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. *Canned goods,* from New Richmond, Eden, Oakfield, and Gillett, WI, to points in AL, GA, KY, MA, TN, NH, VA, NC, PA, LA, AR, and WV, for 180 days. Supporting Shipper(s): Friday Canning Corporation, 660 N. 2nd Street, New Richmond, WI 54017. Send protests to: Mabel E. Holston, TA, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 144827 (Sub-21TA), filed March 7, 1979. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., 100 North Main Bldg., Suite 900, Memphis, TN 38103. *Steel* from Burns Harbor and Gary, IN to Middleton, TN and Horn Lake, MS. Restricted to transportation of shipments originating at Burns Harbor and Gary, IN and destined to the facilities of Dover Elevator Company at Middleton, TN and Horn Lake, MS, for 180 days. An underlying ETA seeks 90

days authority. Supporting Shipper(s): Dover Elevator Company, P.O. Box 468, Horn Lake, MS 38637. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 144927 (Sub-10TA), filed February 22, 1979. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 West, Remington, IN 47977. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, IN 46204. *Cornstarch,* (1) from Lafayette, IN to all points and places in the states of AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, NE, NH, NJ, NY, OH, OK, PA, RI, SC, TN, TX, VA, VT, WI, and WV; and (2) from Hammond, IN to Pickerington, OH, for 180 days. Supporting Shipper: Anheuser-Busch, Inc., 2245 Sagamore Parkway, Lafayette, IN 47905. Send protests to: Beverly J. Williams, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 145406 (Sub-27TA), filed March 13, 1979. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Packinghouse supplies* from the facilities of John Morrell & Co. at Elmhurst, IL to points in CA for 180 days. An underlying ETA seeks 90 days authority. Applicant will tack with authority held in R–18. Supporting Shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145406 (Sub-28TA), filed March 15, 1979. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Insulation products for automotive bodies* from the facilities of Janesville Products located at or near Janesville, WI to Compton, Southgate and Van Nuys, CA; Clinton, Oklahoma; Leeds, Missouri and Fairfax, KS for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Janesville Products, 2315 Beloit Avenue, Janesville, WI 53545. Send protests to: Herbert W. Allan, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145406 (Sub-29TA), filed March 7, 1979. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Meats and packinghouse products* from the facilities of Fischer, Inc., utilized by Wilson Foods Corp., at or near Dubuque, IA to points in CA for 180 days. Applicant will tack with authority in R–17. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145406 (Sub-30TA), filed February 20, 1979. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Fresh meats and packinghouse products* from the facilities of Wilson Foods Corporation, located at Cherokee, IA to points in CA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145517 (Sub-2TA), filed March 6, 1979. Applicant: MANITO TRANSIT CO., Box 8, Ashkum, IL 60911. Representative: Douglas G. Brown, The INB Center, Suite 555, Springfield, IL 62701. *Liquid Fertilizer,* in bulk, in tank trucks from Watseka, IL to IN, for 180 days. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145737 (Sub-3TA), filed March 8, 1979. Applicant: HEURTZ TRUCKING, INC., 425 1st Street, N.W., LeMars, IA 51031. Representative: D. Douglas Titus, Suite 510 Benson Building, Sioux City, IA 51101. *Contract carrier:* irregular routes: *Processed wood fiber,* from Sioux City, IA and Willis, NE to all points in CA, all points in NM, Phoenix, AZ and Kansas City, MO, under contract with Willis Product Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Edward B. Heeney, Willis Products Company, Room 268, Orpheum Electric Bldg., Sioux City, IA 51101. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 145827 (Sub-1TA), filed March 1, 1979. Applicant: LONG ROCK COMPANY, P.O. Box 188, Princeville, IL 61559. Representative: Douglas G. Brown, P. C., The INB Center-Suite 555, Springfield, IL 62701. crude silicon carbide, in bulk in dump trailers, and in bags on flat trailers from the plantsite of E.S.K. Corporation in Hennepin, Illinois to points in the following states: AL, AR, GA, IL, IN, IA, KY, LA, MI, MS, MO, NY, NC, OH, OK, PA, SC, TN, VA, and WI. Supporting shipper(s): E.S.K. Corporation, P.O. box 412, Hennepin, IL 61327. Send protests to: Charles D. Little, DS, ICC, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 145947 (Sub-2TA), filed February 26, 1979. Applicant: SHELTON D. SMITH, d.b.a. PROTOCOL TRUCKING COMPANY, P.O. Box 40961, Garland, TX 75041. Representative: William D. White, Jr., 4200 Republic National Bank Tower, Dallas, TX 75201. Contract carrier, irregular routes, *drilling bits and oil well drilling tools not otherwise identified,* from facilities of Dresser Industries, Security Division and P-M Division, Dallas, Texas to points in Louisiana, for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Dresser Industries, P.O. Box 24647, Dallas, TX 75224. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 18C12, Dallas, TX 75242.

MC 146086 (Sub-1TA), filed March 15, 1979. Applicant: MICHAEL E. NEBBIA, d.b.a. M.E.N. TRUCKING, 695 North Street, Rochester, NY 14605. Representative: Michael E. Nebbia, 695 North Street, Rochester, NY 14605. *USED HOUSELHOLD GOODS,* from Rochester, NY to points in NY, MD, PA, VA, NC, SC, GA, and FL, for 180 days. Supporting Shipper(s): Julia Moreira 208 Emerson Street, Rochester, NY 14613. Olga Gianni, 321 Lake Ave., Apt. 610, Rochester, NY 14613. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Bldg., 100 S. Clinton St.—Rm. 1259, Syracuse, NY 13260.

MC 146187 (Sub-3TA), filed March 14, 1979. Applicant: THE TEN WHEELERS, INC., Route 2, Gregory Road, Greenback, TN 37742. Representative: Edward C. Blank, II, P.O. Box 1004, Columbia, TN 38401. *Wood, aluminum stepladders, collapsed, extension and straight* from the plantsite of Davidson Manufacturing Corporation, Nashville, TN to points AL, AR, FL, GA, IL, IN, KY, LA, MD, MS, MO, NC, OH, PA, SC, TX, VA, and WV, for 180 days. Supporting Shipper(s): Davidson Manuafacturing Corp., 435 Atlas Drive, Nashville, TN 37211. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 146317 (Sub-1TA), filed March 1, 1979. Applicant: BOB BALCH TRUCKING CO., 214 S. Lake Street, Tucumcari, NM 88401. Representative: Roger V. Eaton, P.O. Drawer 965, Albuquerque, NM 87103. *Contract carrier:* irregular routes: *cottonseed meal, cottonseed cake, alfafa pellets,*

alfalfa dried, (all finished feed products), from Lubbock and Leveland, TX, to Tucumcari, NM, for the account of Worley Mills, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Worley Mills, Inc., P.O. Box 907, Tucumcari, NM 88401. Send protests to: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 146387 (Sub-1TA), filed March 9, 1979. Applicant: VANS BUILDERS SUPPLY, INC., 1422 Western Avenue, Las Vegas, NV 89102. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Gypsum Products,* from points in Clark County, NV to points in Marion County, OR., for 180 days. Supporting Shipper(s): Jack Largent Co., 2315 Pringle Road, SE., Salem, OR 97302. Send protests to: W. J. Huetig, DS, ICC, 203 Federal Building, 705 North Plaza St., Carson City, NV 89701.

MC 146397 (Sub-1TA), filed March 1, 1979. Applicant: M.T.I. TRUCKING, INC., 9000 Keystone Crossing, Indianapolis, IN 46240. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Contract carrier: Irregular routes: Glass containers and materials and equipment* used in the manufacture and distribution of glass containers, between the facilities of Anchor Hocking Corp. at Winchester and Richmond, IN, on the one hand, and on the other, points in IL, WI, OH, KY and MO, for 180 days. Under contract with Anchor Hocking Corporation at Lancaster, OH. Supporting shipper: Anchor Hocking Corporation, 109 N. Broad Street, Lancaster, OH 43130. Send protests to: Beverly J. Williams, TA I.C.C. 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 146427 (Sub-1TA), filed March 7, 1979. Applicant: HAROLD S. WILSON, Rt. 1 Box 222, Homedale, ID 83628. Representative: Same as above. *Moulding,* from MT, WA, CA, OR, to Caldwell, ID; from Caldwell, ID to OR, WA, NV, CA, UT, CO, NE, OK, TX, IA, IL, KS, WY, MT, WI, AZ, NM, MO, ND, SD, and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Teton Sales Company, 604 Kit Ave., Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146437 (Sub-1TA), filed March 13, 1979. Applicant: STATE TRUCKING COMPANY, P.O. Box 11439, Greensboro, NC 27409. Representative: A. W. Flynn, Jr., Attorney, P.O. Box 180, Greensboro, NC 27402. *Glass containers and fibreboard containers* from Midway, NC to Eden, NC, for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: Mr. Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125996 (Sub-67TA), filed January 10, 1979, and published in the FR issue of February 5, 1979, and republished as corrected this issue. Applicant: ROAD RUNNER TRUCKING, INC., 2250 South 400 West, Salt Lake City, UT 84115. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. *Frozen potato products* (except commodities in bulk) from Nampa, ID, Hermiston, OR, and Connell and Moses Lake, WA, to Mason City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Fast Food Merchandisers, Inc., 1811–19th St., S.W., Mason City, IA 50402. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138. The purpose of this republication is to show the correct territorial description.

MC 125996 (Sub-69TA), filed January 12, 1979, and published in the FR issue of February 5, 1979, and republished as corrected this issue. Applicant: ROAD RUNNER TRUCKING, INC., 2250 South 400 West, Salt Lake City, UT 84115. Representative: Mac R. Reber (Same address as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses,* except hides and commodities in bulk, as described in Sections A and C of appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, from the facilities of Sioux-Preme Packing Co. at Sioux Center and Sioux City, IA, and Omaha, NE, to points in AZ, CA, ID, NV, OR, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sioux-Preme Packing Co., Inc., Highway 75S P.O. Box 177, Sioux Center, IA 51250. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138. The purpose of this republication is to include the territorial description.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[Notice No. 52]
[FR Doc. 79-11553 Filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Assignment of Hearings

April 12, 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 95540 (Sub-1033F), Watkins Motor Lines, Inc., now assigned for hearing on May 14, 1979, at Philadelphia, Pennsylvania and will be held in the New U.S. Court House, 601 Market Street.

MC–C 10305, Pennsylvania Truck Lines, Inc., and James H. Russell, Inc—Investigation and Revocation of Certificates, now assigned for hearing on May 16, 1979, at Philadelphia, Pennsylvania and will be held in the New U.S. Court House, 601 Market Street,.

MC 142672 (Sub-30F), David Beneux Produce and Trucking, Inc., now assigned for hearing on May 18, 1979, at Philadelphia Pennsylvania and will be held in the New U.S. Court House, 601 Market Street.

MC 145067 (Sub-2F), Lawrence E. Spaide, Inc., now assigned for hearing on May 18, 1979, at Philadelphia, Pennsylavania and will be held in the New U.S. Court House, 601 Market Street.

No. 36298, Volkswagen of America, Inc., et al. v. Arco Auto Carriers, Inc. et al., now assigned for hearing on April 24, 1979, at Washington, D.C. is postponed to June 19, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. Homme, Jr.,
Secretary.

[Notice No. 68]
[FR Doc. 79-11922 Filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

Decided: April 3, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, within 30 days,

will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

H. G. Homme, Jr.
Secretary.

MC 16903 (Sub-61F), filed January 29, 1979. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *limestone, granite, marble, and stone,* (1) from points in Pickens County, GA, to points in AL, AR, CO, FL, LA, MS, NC, NM, OK, SC, and TX, (2) from points in Jefferson and Madison Counties, MO, to points in CO and those in the United States in and east of ND, SD, NE, KS, OK, and TX, and (3) from points in Burnet and Llano counties, TX, to points in DE, GA, MD, MI, NJ, NY, VT, VA, WV, WI, and DC. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 44513 (Sub-4F), filed January 9, 1979. Applicant: MATCO TRANSPORTATION, INC., 3rd Street & Hackensack Ave., S. Kearny, NJ 07307. Representative: Arthur J. Piken, Esq., One Lefrak City Plaza, Flushing, NY 11368. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), in containers or in trailers, between New York, NY, and Philadelphia, PA, on the one hand, and, on the other, Alexandria, VA, restricted to the transportation of traffic having a prior or subsequent movement by rail or water. (Hearing site: New York, NY.)

MC 52793 (Sub-24F), filed January 18, 1979. Applicant: BEKINS VAN LINES CO., a Nebraska Corporation, 333 S. Center Street, Hillside, IL 60162. Representative: Ernest E. Gallego, 777 Flower Street, Glendale, CA 91201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *new furniture, new furnishings, and new appliances*, (2) *new store and office fixtures*, (3) *new kitchen and institutional fixtures and equipment*, and (4) *accessories and parts* for the commodities in (1), (2), and (3) above, from points in CO to points in CA, OR, WA, NV, ID, MT, AZ, UT, WY, NM, TX, OK, AR, KS, NE, MO, IA, ND, and SD. (Hearing site: Denver, CO, or Los Angeles, CA.)

MC 59583 (Sub-168F), filed January 1, 1979. Applicant: THE MASON AND DIXON LINES, INCORPORATED, Eastman Road, P.O. Box 969, Kingsport, TN 37662. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and

those requireing special equipment), between Birmingham and Mobile, AL, over U.S. Hwy 31, serving all intermediate points and serving Kilby, Prattville, and Siluria, AL, and points within 15 miles of Birmingham and Mobile, AL, as off-route points. (Hearing site: Birmingham, AL.)

Note.—Carrier intends to tack at Birmingham to serve points throughout its regular-route system.

MC 59583 (Sub-170F), filed January 26, 1979. Applicant: THE MASON AND DIXON LINES, INCORPORATED, East Stone Drive, Post Office Box 969, Kingsport, TN 37662. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Florence, SC, and Vicksburg, MS, over Interstate Hwy 20; (2) Between Charlotte, NC, and Baton Rouge, LA: From Charlotte over Interstate Hwy 85 to Montgomery, AL, then over Interstate Hwy 65 (also over U.S. Hwy 31) to Mobile, AL, then over Interstate Hwy 10 (also over U.S. Hwy 90) to Baton Rouge, and return over the same routes; (3) Between junction Interstate Hwy 59 and Interstate Hwy 12 and Baton Rouge, LA, over Interstate Hwy 12; (4) Between Fayetteville, NC, and Jacksonville, FL, over Interstate Hwy 95; (5) Between Jacksonville, FL, and Natchez, MS: (A) From Jacksonville over U.S. Hwy 90 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Valdosta, GA, then over U.S. Hwy 84 to Natchez, and return over the same routes; (B) From Jacksonville over Interstate Hwy 10 to Mobile, AL, then over U.S. Hwy 98 to Natchez, and return over the same routes; (6) Between Jacksonville, FL, and Greenville, MS: From Jacksonville over U.S. Hwy 1 to Waycross, GA, then over U.S. Hwy 82 to Greenville, and return over the same routes; (7) Between Augusta and Valdosta, GA: From Augusta over U.S. Hwy 1 to Waycross, GA, then over U.S. Hwy 84 to Valdosta, and return over the same routes; (8) Between Savannah, GA, and Meridian, MS: From Savannah over Interstate Hwy 16 to Macon, GA, then over U.S. Hwy 80 to Meridian, and return over the same routes; (9) Between Augusta and Macon, GA: From Augusta over Interstate Hwy 20 to junction U.S. Hwy 78, then over U.S. Hwy 78 to Thomson, GA, then over GA Hwy 12 to Warrenton, GA, then over GA Hwy 16 to Sparta, GA, then over GA Hwy 22 to Milledgeville, GA, then over GA Hwy 49 to Macon, and return over the same routes; (10) Between Jellico, TN, and junction Interstate Hwy 75 and Interstate Hwy 10 over Interstate Hwy 75; (11) Between Atlanta, GA, and Tallahassee, FL: From Atlanta over U.S. Hwy 19 to Thomasville, GA, then over U.S. Hwy 319 to Tallahassee, and return over the same routes; (12) Between Birmingham, AL, and Panama City, FL: From Birmingham over Interstate Hwy 65 (also over U.S. Hwy 31) to Montgomery AL, then over U.S. Hwy 231 to Panama City, and return over the same routes; (13) Between Panama City, FL, and Mobile, AL, over U.S. Hwy 98; (14) Between the Kentucky-Tennessee State line near Clarksville, TN, and the junction of Interstate Hwy 59 and Interstate Hwy 10 at or near Slidell, LA: From the Kentucky-Tennessee State line over Interstate Hwy 24 to junction Interstate Hwy 59, then over Interstate Hwy 59 to junction Interstate Hwy 10, and return over the same routes; (15) Between Union City, TN, and New Orleans, LA: From Union City over U.S. Hwy 51 to Memphis, TN, then over Interstate Hwy 55 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same routes; (16) Between Jackson and Gulfport, MS, over U.S. Hwy 49; (17) Between Memphis, TN, and Dawson, GA: From Memphis over U.S. Hwy 78 to Birmingham, AL, then over U.S. Hwy 280 to Richland, GA, then over GA Hwy 55 to Dawson, and return over the same routes; (18) Between Corinth, MS, and Mobile, AL: From Corinth over U.S. Hwy 45 to Tupelo, MS, then over Alt. U.S. Hwy 45 to junction U.S. Hwy 45, then over U.S. Hwy 45 to Mobile, and return over the same routes; Serving in connection with routes (1) through (18) above all intermediate points and as off-route points all points in SC, TN, GA, AL, and MS, those in LA on and east of the Mississippi River, and those in FL (a) on and west of U.S. Hwy 319 and (b) those on, east, and north of a line beginning at the FL–GA State line and extending along U.S. Hwy 41 to Lake City, FL, and then along FL Hwy 100 to the Atlantic Ocean. (Hearing sites: Washington, DC; Atlanta, GA; Nashville, TN; and Jackson, MS.)

Note.—Applicant intends to tack at common points in TN, AL, GA, SC, and NC with its regular-route authority to perform through service throughout its system.

MC 61592 (Sub-433F), filed February 5, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P. O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from the facilities of Northwestern Steel and Wire Company at Rock Falls and Sterling, IL, to points in AR, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, ND, OK, SD, TN, TX, and WI; and (2) *materials and supplies* used in the manufacture and distribution of iron and steel articles, (except commodities in bulk), from points in AR, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, ND, OK, SD, TN, TX, and WI to the facilities of Northwestern Steel and Wire Company at Rock Falls and Sterling, IL. (Hearing Site: Chicago, IL.)

MC 67403 (Sub-5F), filed January 29, 1979. Applicant: BROES TRUCKING CO., INC., Interstate Hwy 295 & Dominick Lane, Paulsboro, NJ 08066. Representative: Ira G. Megdal, 499 Cooper Landing Road, Cherry Hill, NJ 08002. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (1) from the facilities of Precision Coil Processing, at Philadelphia, PA, to New York, N.Y., Ossining, Middletown, W. Babylon, and Rhinebeck, NY, York, McClure, Easton, Dunmore, Berwick, Tatamy, Perkasie, Wilkes Barre, Reading, Carbondale, Lancaster, Topton, Red Lion, Allentown, Stroudsburg, Lewisburg, Scranton, Mount Joy, West Hazelton, Elverson, and Wyoming, PA, and Hampstead, Finksburg, and Baltimore, MD, and (2) from New York, NY, to the facilities of Precision Coil Processing, at Philadelphia, PA. (Hearing site: Philadelphia, PA, or Camden, NJ).

MC 71593 (Sub-20F), filed January 29, 1979. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Boston and Springfield, MA, New Haven, CT, New York, NY, Newark, NJ, Philadelphia, PA, Baltimore, MD, Columbus, Cleveland, Cincinnati, and Toledo, OH, Detroit, MI, St. Louis, MO, Memphis, TN, Chicago, IL, Milwaukee, WI, and St. Paul, MN, on the one hand, and, on the other, points in FL, restricted to the transportation of

traffic moving on bills of lading of freight forwarders as defined in Section 10102(8) (1978) (formerly Section 402(a)(5) of the Interstate Commerce Act). (Hearing site: New York, NY.)

MC 80443 (Sub-17F), filed January 26, 1979. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Road, Roseville, MN 55113. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Simcote, Inc., at or near Newport, MN, to points in the United States (except AK and HI). (Hearing site: Minneapolis or St. Paul, MN.)

MC 103993 (Sub-948F), filed January 30, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U. W. 20 West, Elkhart, IN 46515. Representative: Paul D. Borghesani (same address as applicant.) To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *railroad ties, timber, and lumber*, from Louisville and Mayfield, KY, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Louisville, KY.)

MC 103993 (Sub-949F), filed January 5, 1979. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe, plastic fittings, iron valves, and iron hydrants*, from the facilities of Clow Corporation, at or near Columbia, MO, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Chicago, IL.)

MC 106603 (Sub-194F), filed January 19, 1979. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street, SW., Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *insulation and sound deadening material*, from Joliet, IL, to points in IN, KY, MI, NJ, NY, OH, and PA. (Hearing site: Washington, DC, or Chicago, IL.)

MC 107012 (Sub-304F), filed November 15, 1978, and previously published in the **Federal Register** on January 30, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as above). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *(1) uncrated packaging equipment, and (2) parts and accessories* for uncreated packaging equipment in mixed loads with uncrated packaging equipment, from points in MN and WI to points in the United States (except AK and HI). (Hearing site: Minneapolis, MN, or Washington, DC.)

Note.—The purpose of this republication is to show part (2) moving in mixed loads with (1) above.

MC 107743 (Sub-54F), filed January 29, 1979. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, lumber products, and wood products*, (1) from Hulett, WY, to points in AR, IL, IN, IA, KS, KY, MI, MO, NE, OH, PA, TN, TX, and WI, and (2) from points in OR to points in WY. (Hearing site: Casper, Wy, or Spokane, WA.)

MC 108633 (Sub-17F), filed December 13, 1978. Applicant: BARNES FREIGHT LINE, INC., P.O. Box 800, Carrollton, GA 30117. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road, NE, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Atlanta, GA, and Birmingham, AL: from Atlanta over U.S. Hwy 41 to junction U.S. Hwy 411, then over U.S. Hwy 411 to Rome, GA, then over GA Hwy 20 to junction AL Hwy 9, then over AL, Hwy 9 to Centre, AL, then over U.S. Hwy 411 to Gadsden, AL, then over Interstate Hwy 59 to Birmingham, and return over the same route; (2) between Rome, GA, and Centre, AL: from Rome over U.S. Hwy 27 to junction U.S. Hwy 411, then over U.S. Hwy 411 to Centre, and return over the same route; (3) between Atlanta, GA, and Gadsden, AL: from Atlanta over U.S. Hwy 78 to junction U.S. Hwy 278, then over U.S. Hwy 278 to Gadsden, and return over the same route; (4) between Atlanta, GA, and Mobil, AL: from Atlanta over Interstate Hwy 85 to junction U.S. Hwy 29, then over U.S. Hwy 29 to junction Interstate Hwy 85, then over Interstate Hwy 85 to Montgomery, AL, then over Interstate Hwy 65 to Mobile, and return over the same route; (5) between Montgomery and Dothan, AL, over U.S. Hwy 231; (6) between Montgomery and Andalusia, AL: from Montgomery over U.S. Hwy 31 to junction AL Hwy 55, then over AL Hwy 55 to Andalusia, and return over the same route; (7) between Montgomery and Andalusia, AL: from Montgomery over U.S. Hwy 31 to junction AL Hwy 55, then over AL Hwy 55 to Andalusia, and return over the same route; (8) between Birmingham and Montgomery, AL, over U.S. Hwy 31; (9) between Birmingham and Montgomery, AL, over Interstate Hwy 65; (10) between Montgomery, AL, and the AL–MS State line, over U.S. Hwy 80; (11) between Selma and Mobile, AL: from Selma over AL Hwy 22 to junction AL Hwy 5, then over AL Hwy 5 to junction U.S. Hwy 43, then over U.S. Hwy 43 to Mobile, and return over the same route; (12) between Demopolis, AL, and junction AL Hwy 5 and U.S. Hwy 43, at or near Thomasville, AL, over U.S. Hwy 43; (13) betwseen Birmingham, AL, and the AL–MS State line, at or near York, AL, over U.S. Hwy 11; (14) between Birmingham, AL, and the AL–MS State line: from Birmingham over U.S. Hwy 11 to junction Interstate Hwy 59, then over Interstate Hwy 59 to junction U.S. Hwy 82 at or near Tuscaloosa, AL, then over U.S. Hwy 82 to the AL–MS State line, and return over the same route; (15) between Montgomery and Florence, AL: from Montgomery over U.S. Hwy 82 to junction U.S. Hwy 43 at or near Tuscaloosa, AL, then over U.S. Hwy 43 to junction U.S. Hwy 278, then over U.S. Hwy 278 to junction AL Hwy 5, then over AL Hwy 5 to junction U.S. Hwy 43, then over U.S. Hwy 43 to Florence, and return over the same route; (16) between Birmingham, AL, and the AL–MS State line, over U.S. Hwy 78; (17) between Guin, AL, and the AL–MS State line, over U.S. Hwy 278; (18) between Birmingham and Decatur, AL: from Birmingham over Interstate Hwy 65 to junction U.S. Hwy 31, then over U.S. Hwy 31 to Decatur, AL, and return over the same route; (19) between Birmingham, AL, and the AL–TN State line, over Interstate Hwy 65; (20) between Huntsville and Florence, AL: (a) over U.S. Hwy 72, and (b) over Alt. U.S. Hwy 72; (21) between Birmingham and Hunstville, AL: from Birmingham over AL Hwy 79 to junction U.S. Hwy 231, then over U.S. Hwy 231 to Huntsville, and return over the same route; (22) between Birmingham, AL, and the AL–TN State line: from

Birmingham over Interstate Hwy 59 to junction U.S. Hwy 431, then over U.S. Hwy 431 to junction U.S. Hwy 72, at or near Huntsville, AL, then over U.S. Hwy 72 to the AL–TN State line, and return over the same route; (23) between Guntersville and Huntsville, AL, over U.S. Hwy 431; (24) between Birmingham and Phenix City, AL, over U.S. Hwy 280; (25) between Opelika and Anniston, AL, from Opelika over U.S. Hwy 431 to junction U.S. Hwy 78, then over U.S. Hwy 78 to Anniston, and return over the same route; (26) between Dothan and Mobile, AL: from Dothan over U.S. Hwy 84 to junction U.S. Hwy 29, then over U.S. Hwy 29 to junction U.S. Hwy 31, then over U.S. Hwy 31 to junction AL Hwy 21 at or near Atmore, AL, then over AL Hwy 21 to junction Interstate Hwy 65, then over Interstate Hwy 65 to Mobile, and return over the same route; serving in connection with (1) through (26) above, all intermediate points, and all points in AL as off-route ponts, and serving in connection with (1), (3), and (4) above, all points within 15 miles of Atlanta, GA, as off-route points. (Hearing site: Atlanta, GA.)

Note.—Carrier intends to tack the above described authority in order to provide a through service. Carrier also intends to tack this authority with authority presently held by in MC–108633 and subs thereto and to interline with all carriers at Mobile, Dothan, Montgomery, Tuscaloosa, Gadsden, Birmingham, Anniston, Phenix City, Florence, and Huntsville, AL, Atlanta, LaGrange, Carrollton, and Rome, GA, Tupelo, MS, and Memphis, TN.

MC 109633 (Sub-41F), filed January 15, 1979. Applicant: ARBET TRUCK LINES, INC., 222 East 135th Place, Chicago, IL 60627. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from points in WI to points in the United States (except AK, HI, and WI), restricted to the transportation of traffic originating at the facilities of The Larsen Company. (Hearing site: Green Bay, WI.)

MC 112113 (Sub-11F), filed January 29, 1979. Applicant: GYPSUM HAULAGE, INC., 6500 Pearl Road, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: (1) *gypsum, gypsum products, and building materials*, and (2) *equipment, materials, and supplies* used in the manufacture, distribution, installation, and application of the commodities in (1) above, between points in AL, CT, DE, GA, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC, under continuing contract(s) with National Gypsum Company, Gold Bond Building Products Division, of Buffalo, NY. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 112713 (Sub-227F), filed November 16, 1978. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Houston, TX, and Freeport, TX, over TX Hwy 288, serving all intermediate points, (2) between Houston, TX, and Laredo, TX, over U.S. Hwy 59, serving all intermediate points and the off-route points of Port Lavaca, Seadrift, and North Seadrift, (3) between Victoria, TX, and Corpus Christi, TX; from Victoria over U.S Hwy 77 to Junction U.S. Hwy 181, then over U.S. Hwy 181 to Corpus Christi, and return over the same route, serving all immediate points and the off-route point of Aransas Pass, TX, (4) between San Antonio, TX, and junction U.S. Hwys 77 and 181 at or near Sinton, TX; from San Antonio over U.S. Hwy 181 to junction U.S. Hwy 77 at or near Sinton, and return over the same route, serving all intermediate points, (5) between junction U.S. Hwys 181 and 77 at or near Sinton, TX, and Brownsville, TX; from junction U.S. Hwys 181 and 77 at or near Sinton, over U.S. Hwy 77 to Brownsville, and return over the same route, serving all intermediate points, (6) between Corpus Christi, TX, and Robstown, TX, over TX Hwy 44, serving all intermediate points, (7) between San Antonio, TX, and Laredo, TX, over Interstate Hwy 35, serving all intermediate points, (8) between Eagle Pass, TX, and junction of U.S. Hwy 57 and Interstate Hwy 35; from Eagle Pass over U.S. Hwy 57 to junction Interstate Hwy 35, and return over the same route, serving all intermediate points, (9) between Laredo, TX, and Brownsville, TX; from Laredo over U.S. Hwy 83 to junction U.S. Hwy 28, then over U.S. Hwy 281 to Brownsville, and return over the same route, serving all intermediate points, (10) between junction U.S. Hwys 281 and 83 at or near Pharr, TX, and Harlingen, TX; from junction U.S. Hwys 83 and 281 at or near Pharr, over U.S. Hwy 83 to Harlingen, and return over the same route, serving all intermediate points, and the off-route point of Edinburg, TX, (11) between Shreveport, LA, and Houston, TX; from Shreveport over U.S. Hwy 79 to Carthage, TX, then over U.S. Hwy 59 to Houston, and return over the same route, as alternate routes for operating convenience only, and (12) between Memphis, TN, and Houston, TX; from Memphis over Interstate Hwy 40 to Little Rock, AR, then over Interstate Hwy 30 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Houston, TX, and return over the same route, as an alternate route for operating convenience only. (Hearing site: Dallas or Houston, TX.)

MC 114273 (Sub-505F), filed December 21, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cleaning compounds and such articles* as are distributed by paint stores and home decorating stores, (except commodities in bulk, in tank vehicles), from Chicago, IL, to Charleston, Morgantown, Parkersburg, Beckley, and Bluefield, WV, St. Clairsville, OH, and points in IA, KS, MN, MO, and NE. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—The purpose of this application is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-536F), filed January 31, 1979. Applicant: CRST, INC., 3930 16 Avenue, S.W., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (1) from E. Chicago, Gary and Elkhart, IN, Milwaukee, WI, Detroit, MI, and Toledo, OH, to East Moline and Kewanee, IL, and (2) from St. Louis, MO, to points in IA and East Moline, IL. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-535F), filed January 31, 1979. Applicant: CRST, INC., 3930 16 Avenue, S.W., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, by motor vehicle, over irregular routes, transporting (1) *drugs, cosmetics, plastic boxes, weed killing compounds*, and *animal or poultry feed supplements*, and (2)

materials and supplies, used in the manufacture and production of the commodities named in (1) above (except commodities in bulk), between the facilities of Eli Lilly and Company, At Clinton, Indianapolis, and Lafayette, IN, and Omaha, NE, on the one hand, and, on the other, points in IA, MN, ND, SD, VA, MD, and NE. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-538F), filed January 31, 1979. Applicant: CRST, INC., 3930 16 Avenue, S.W., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from Marysville, MI, to Deshler and Geneva, NE. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—The purpose of this application is to substitute single-line service for existing joint-line service.

MC 116763 (Sub-433F), filed August 17, 1978, and previously published in the **Federal Register** on October 5, 1978. Applicant: CARL SUBLER TRUCKING INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *lawn and garden care products, agricultural insecticides, and agricultural fungicides*, (except commodities in bulk), from the facilities of O. M. Scott & Sons Company, Inc., at or near Marysville, Columbus, and Vermillion, OH, to those points in NY on and north of NY Hwy 7, and points in IA, KY, MN, TN, and WI. (Hearing site: Columbus, OH.)

Note.—The purpose of this republication is to correct the destination State of LA to IA.

MC 116763 (Sub-469F), filed January 26, 1979. Applicant: CARL SUBLER TRUCKING, INC., a Florida corporation, North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products*, in packages, from the facilities of Texaco, Inc., in Jefferson County, TX, to points in AL, CT, DE, GA, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: Houston, TX.)

MC 118142 (Sub-210F), filed February 7, 1979. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Cudahy Foods Company, at or near Atlanta, GA, to points in CO, KS, LA, MO, NE, OK, and TX, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Atlanta, GA, or Kansas City, MO.)

MC 121183 (Sub-3F), filed January 29, 1979. Applicant: EDWARDS MOTOR LINES, INC., 245 State Road, Westport, MA 02790. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043.To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *garments*, on hangers, and *materials, equipment, and supplies* used in the manufacture of garments, (except commodities in bulk), between Tiverton, RI, and Braintree and Randolph, MA. (Hearing site: Providence, RI, or Boston, MA.)

MC 121663 (Sub-1F), filed August 24, 1978, and previously published in the **Federal Register** on October 26, 1978. Applicant: REFRIGERATED TRUCKING SERVICE, INC., 1502 Niagara Street, Buffalo, NY 14203. Representative: Robert D. Gunderman, 710 Statler Hilton, Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *general commodities* (except those of unusual value, classes A and b explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), moving in vehicles equipped with mechanical refrigeration, from Buffalo, NY, to points in Chautauqua, Erie, Monroe, and Niagara Counties, NY.

Notes.—(1) Applicant states that by this application it seeks to convert its Certificate of Registration No. MC–121663 to a certificate of public convenience and necessity. Issuance of a certificate is conditioned upon applicant's written request for cancellation of its Certificate of Registration in No. MC–121663. (2) The purpose of this republication is to change the commodity description. (Hearing site: Buffalo, NY.)

MC 125433 (Sub-117F) filed December 1, 1978. Applicant: F–B TRUCK LINE COMPANY, A Corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson, 1945 South Redwood Road, Salt Lake City, UT 84104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) (a) *Commodities*, the transportation of which by reason of size or weight requires special handing or the use of special equipment, and (b) *commodities*, the transportation of which does not require special handling or the use of special equipment, in mixed loads with the commodities in (1)(a) above, (2) *self-propelled articles*, except new passenger automobiles (in truckaway service), on trailers, (3) *iron and steel articles*, as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (4) *pipe* (except iron and steel pipe) *and pipe fittings*, and (5) *construction materials* (except commodities in bulk), between points in CA and NV, on the one hand, and, on the other, points in OR, WA, and ID. (Hearing site: Portland, OR, or Seattle, WA.)

MC 125433 (Sub-203F), filed January 29, 1979. Applicant: F–B TRUCK LINE COMPANY, A Corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting *iron and steel articles*, between points in Pima and Maricopa Counties, AZ, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Phoenix, AZ, or Salt Lake City, UT.)

MC 125433 (Sub-205F), filed January 29, 1979. Applicant: F–B TRUCK LINE COMPANY, A Corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *barite*, from points in Lander County, NV, to points in the United States (except AK and HI); (2) *soda ash*, from points in Sweetwater County, WY, to points in the United States (except AK and HI); and (3) *bentonite*, from points in Big Horn County, WY, to points in the United States (except KS, LA, OK, TX, AK, and HI). (Hearing site: Houston, TX.)

MC 128273 (Sub-328F), filed December 26, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting (1)(a) *paper and paper products,* from Richmond, VA, to those points in the United States in and east of WI, IL, KY, TN, and MS, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, in the reverse direction; (2)(a) *paper and paper products,* from Tifton, GA, to points in the United States (except AK and HI), and (b) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, in the reverse direction; (3) *paper and paper products and pulpboard,* from Savannah, GA, to Louisville, KY, Indianapolis, IN, points in AL, CT, DE, FL, MD, MA, NY, NJ, NC, OH, PA, RI, SC, TN, VA, WV, points in IN on and north of U.S. Hwy 40, points in MI on and south of MI Hwy 21, and points in KY within the commercial zone of Cincinnati, OH: (4) *paper, paper products, and plastic products,* from Kalamazoo, MI, to Minneapolis and Austin, MN, Kansas City, MO, Buffalo, Syracuse, and Rochester, NY, Louisville, KY, and St. Louis, MO, and points in IA, IL, IN, MI, OH, NE, those in PA west of a line beginning at the PA–WV State line and extending along U.S. Hwy 119 to junction U.S. Hwy 219, then along U.S. Hwy 219 to the NY–PA State line, and points in WI east of U.S. Hwy 41; (5) *honeycomb paper products,* from Laurel, VA, to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI); and (6) *chemicals,* in containers, from Savannah and Valdosta, GA, and Jacksonville, FL, to points in the United States in and east of MN, IA, NE, KS, OK, and TX, restricted in (1) through (6) above against the transportation of commodities in bulk, in tank vehicles, and further restricted in (1) through (6) above to the transportation of traffic originating at or destined to the facilities of Union Camp Corporation at or near the named points. (Hearing site: Newark, NY, or Washington, DC.)

MC 128273 (Sub-329F), filed January 2, 1979. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *printing presses and printing press articles,* (except commodities in bulk, in tank vehicles), from points in Berks County, PA, to points in the United States (except AK, HI, and PA); and (2) *castings, forgings, machined parts, and materials, equipment, and supplies* used in the manufacture and distribution of printing presses and printing press articles, (except commodities in bulk, in tank vehicles), from points in IL, IN, IA, MI, MN, MO, OH, VA, and WI to points in Berks County, PA, restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Graphic Systems, Division of Rockwell International, in Berks County, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 128273 (Sub-335F), filed January 31, 1979. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of sporting goods, and recreational equipment (except commodities in bulk, in tank vehicles), between Ponca City, OK, on the one hand, and, on the other, points in the United States (except AK, HI, and OK), restricted to the transportation of traffic originating at or destined to the facilities of Huffy Corporation. (Hearing site: Columbus, OH, or Washington, DC.)

MC 128343 (Sub-43F), filed January 29, 1979. Applicant: C-LINE, INC., Tourtellot Hill Road, Chepachet, RI 02814. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum wire and cable,* from Portsmouth and Bristol, RI, to points in FL, GA, NC, and SC; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of aluminum wire and cable, in the reverse direction, under continuing contracts in (1) and (2) above with Kaiser Aluminum and Chemical Corporation, of Oakland, CA. (Hearing site: Washington, DC, or Boston, MA.)

Note.—Dual operations may be involved.

MC 128343 (Sub-44F), filed January 29, 1979. Applicant: C-LINE, INC., Tourtellot Hill Road, Chepachet, RI 02814. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum wire and cable,* from Hillside, NJ, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of aluminum wire and cable, in the reverse direction, under continuing contracts in (1) and (2) above with Kaiser Aluminum and Chemical Corporation, of Oakland, CA. (Hearing site: Washington, DC, or Boston, MA.)

Note.—Dual operations may be involved.

MC 134783 (Sub-46F), filed January 29, 1979. Applicant: DIRECT SERVICE, INC., 940 East 66th Street, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods and citrus concentrate* (except commodities in bulk), from the facilities of Bluebonnett Foods, Inc., (a) at Corpus Christi, TX, and (b) in Cameron and Hidalgo Counties, TX, to those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Dallas, TX, or Lubbock, TX.)

Note.—Dual operations may be involved.

MC 136713 (Sub-15F), filed January 26, 1979. Applicant: AERO LIQUID TRANSIT, INC., 1717 Four Mile Road, NE., Grand Rapids, MI 49505. Representative: Daniel J. Kozera, Jr., The McKay Tower, Suite 2–A, Grand Rapids, MI 49503. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transportating *anhydrous ammonia and fertilizers,* in bulk, from the facilities of Chevron Chemical Company, at or near Fort Madison, IA, to points in MO and IL. (Hearing site: Lansing or Detroit, MI.)

Note.—Dual operations are involved in this proceeding.

MC 138553 (Sub-3F), filed January 29, 1979. Applicant: M & N GRAIN COMPANY, a Missouri corporation, Box P, Business 71 South, Nevada, MO 64772. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hides,* from Chicago, Hampshire, Mason City, and Rockford, IL, Evansville, Fort Wayne, and Indianapolis, IN, Cedar Rapids, Denison, Spencer, and Tama, IA, Solomon and Wichita, KS, Louisville, KY, Detroit, MI, Minneapolis and St. Cloud, MN, Meridian and Tupelo, MS, Joplin, Kansas City, Rock Port, and Springfield, MO, Chadron, NE, Dakota City, Gibbon, McCook, and Omaha, NE, Cincinnati, Cleveland, Columbus, and Toledo, OH, Rapid City, SD, Memphis, TN, Chippewa Falls, Green Bay, and Milwaukee, WI, to Laredo, TX. (Hearing site: New York, NY.)

Note.—Dual operations are involved in this proceeding.

MC 138553 (Sub-4F), filed January 29, 1979. Applicant: M & N GRAIN COMPANY, a Missouri corporation, Box P, Business 71 South, Nevada, MO 64772. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transportating *hides*, (1) from Los Angeles, CA, Macon, GA, Hampshire, IL, Springfield, MO, Newark, NJ, Philadelphia, PA, Bellingham and Seattle, WA, and Milwaukee, WI, to Laredo, TX, (2) from Springfield, MO, North Platte, NE, Lubbock, TX, and Muskego, WI, to Los Angeles, CA, and (3) from North Platte, NE, to Oakland and San Francisco, CA. (Hearing site: San Diego, CA.)

Note.—Dual operations are involved in this proceeding.

MC 138732 (Sub-20F), filed February 5, 1979. Applicant: OSTERKAMP TRUCKING, INC., 764 N. Cypress St., Box 5546, Orange, CA 92667. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *bentonite clay and lignite coal*, (a) from the facilities of American Colloid Co., at points in Phillips County, MT, and Crook and Big Horn Counties, WY, to points in OR and WA and (b) from the facilities of American Colloid Co., at Upton, WY, to points in AZ, CA, CO, NV, NM, OK, OR, TX, UT, and WA; (2) *lignite coal*, from the facilities of American Colloid Co., at points in Bowman County, ND, to points in OR and WA; and (3) *bentonite clay, lignite coal, and water impedance board*, from the facilities of American Colloid Co., at points in Butte County, SD, to points in AZ, CA, CO, NV, NM, OK, OR, TX, UT, and WA. (Hearing site: San Francisco, CA, or Chicago, IL.)

MC 138882 (Sub-181F), filed February 5, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *zinc, zinc oxide, zinc dust, lead sheet, metallic cadmium, zinc dross, residue, skimmings and scrap;* and (2) *equipment, materials*, and *supplies* used in the manufacture of the commodities named in (1) above, between the facilities of St. Joe Zinc Co., Josephtown, Potter Township, Beaver County, PA, and those points in the United States in and east of MN, IA, NE, KS, OK, and TX. (Hearing site: Pittsburgh, PA, or Birmingham, AL.)

MC 138882 (Sub-224F), filed February 23, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products, and materials, equipment, and supplies* used in the production and distribution of paper and paper products, between the facilities of Union Camp Corporation, at or near Franklin, VA, and points in CT, RI, MA, NH, VT, and ME. (Hearing site: Birmingham, AL, or Newark, NJ.)

MC 138882 (Sub-225F), filed March 1, 1979. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: James W. Segrest (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe, plastic valves, plastic fittings, plastic accessories, and equipment, materials, and supplies* used in the manufacture of plastic pipe, plastic valves, plastic fittings, and plastic accessories, (except commodities in bulk), between the facilities of Dav-Tite PVC Pipe Plant, Division of Davis Water and Waste Industries, at Thomasville, GA, and points in WV, MD, PA, NY, DE, NJ, CT, RI, MA, WI, MN, IA, IL, IN, OH, MI, MO, KS, OK, TX, ND, SD, and NE. (Hearing site: Birmingham or Montgomery, AL.)

MC 139482 (Sub-96F), filed February 5, 1979. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Liquors, alcoholic, from Plainfield, IL, Frankfort, IN, Bardstown, Frankfort, and Louisville, KY, Boston, MA, Detroit, MI, New York, NY, Cincinnati, OH, and Schenley, PA, to Minneapolis, MN; and (2) wines and beer*, from New York and Glendale, NY, and Lodi, CA, to Minneapolis, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 139822 (Sub-3F), (correction), filed January 3, 1979, published in the **Federal Register**, issue of March 1, 1979, and republished, as corrected, this issue. Applicant: FOOD CARRIER, INC., P.O. Box 2287, Savannah, GA 31402. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue & 13th St., NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *animal, poultry, and fish feed* and (2) *corn products* (except in bulk), from the facilities of The Jim Dandy Company, at or near Birmingham and Decatur, AL, and Springfield, TN, to points in AL, AR, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NC, OH, OK, SC, TN, TX, VA, and WV; and (3) *materials and supplies* used in the manufacture, sale, and distribution of feed and corn products (except commodities in bulk, in tank vehicles), from points in AL, AR, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NC, OH, OK, SC, TN, TX, VA, and WV, to the facilities of The Jim Dandy Company, at or near Birmingham and Decatur, AL, and Springfield, TN. (Hearing site: Birmingham, AL, or Washington, DC.) The purpose of this republication is to correct the commodity description in (2) above.

MC 142062 (Sub-22F), filed February 13, 1979. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., Post Office Drawer P, Sellersburg, IN 47172. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are manufactured or distributed by a manufacturer of aluminum and aluminum products, from the facilities, of Reynolds Metals Company, at or near Louisville, KY, to Macon and Morrow, GA, and Birmingham, AL, under continuing contract(s) with Reynolds Metals Company, of Louisville, KY. (Hearing site: Louisville, KY.)

MC 142743 (Sub-8F), filed January 12, 1979. Applicant: FAST FREIGHT SYSTEMS, INC., P.O. Box 132C, Tupelo, MS 38801. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *composition board, plywood, particle board, and hardboard*, and (b) *accessories and materials* used in the installation and sale of the commodities named in (1)(a) above, from the facilities of Simplex Industries, Inc., at Adrian, Constantine, and Palmyra, MI, to points in AL, AR, FL, GA, MS, NC, SC, TN, and TX, and (2) *materials and supplies* (except commodities in bulk), used in

the manufacture and sale of the commodities in (1) above, in the reverse direction. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 143103 (Sub-6F), filed October 30, 1978, and previously published in the **Federal Register** on December 21, 1978. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, commodities* which are otherwise exempt from economic regulation under Section 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act), in mixed loads with foodstuffs (except commodities in bulk), and *advertising materials, packaging materials, and shipping materials*, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Uncle Ben's Foods or American Frozen Foods, Divisions of Uncle Ben's Inc., under continuing contract(s) with (a) Uncle Ben's Foods and American Frozen Foods, Division of Uncel Ben's Inc., and (b) Uncle Ben's Inc., of Houston, TX. (Hearing site: Houston, TX.)

Note.—The purpose of this republication is to correct the commodity description and to add American Frozen Foods as a contracting shipper. Dual operations are involved.

MC 143533 (Sub-4F), filed November 20, 1978, and previously published in the FR on January 30, 1979. Applicant: DIXON LEASING CO., INC., Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Calvin F. Major, 200 West Grace Street, Suite 415, Richmond, VA 23220. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *corrugated asphalt, roofing* and *roofing accessories, rudge rolls, skylight sheets*, and *filler strips*, from Fredericksburg, VA, Philadelphia, PA, and Lindenwold and Port Elizabeth, NJ, to points in AL, AR, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, under a continuing contract with Onduline U.S.A., Inc., of Fredericksburg, VA. (Hearing site: Richmond or Fredericksburg, VA.)

Note.—The purpose of this republication is to change the docket number from MC 143553 (Sub-4F) to MC 143533 (Sub-4F).

MC 144023 (Sub-6F), filed January 26, 1979. Applicant: TAYLOR TRANSPORT, INC., a North Carolina corporation, Route 1, Fort Mill, SC 29715. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric heaters, metering devices, switches, controllers, transformers, circuit brakers*, (2) *parts* and items used in the manufacture, and distribution of the commodities in (1) above, between the facilities of Federal Pacific Electric Company, Fort Mill, SC, on the one hand, and, on the other, points in the United States (excluding AK and HI), under continuing contract(s) with Federal Pacific Electric Company. (Hearing site: Washington, DC.)

MC 144503 (Sub-5F), filed January 31, 1979. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. To operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, of 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of John Morrell and Co., at Estherville and Sioux City, IA, and Sioux Falls, SD, to points in AL, FL, GA, LA, MS NC, SC, and TN, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Atlanta, GA.)

MC 145152 (Sub-25F), filed November 29, 1978, and previously published in the **Federal Register** on February 6, 1979. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk, in tank vehicles), in insulated or mechanically refrigerated equipment, from the facilities of Kraft, Inc., at or near Lakeland, FL, to points in AL, GA, KY, LA, MS, NC, SC, TN, and VA. (Hearing site: Atlanta, GA, or Tampa, FL.)

Note.—The purpose of this republication is to reflect the subjunctive 'or' in lien of the conjunctive 'and' in the equipment restriction.

MC 145213 (Sub-1F), filed January 29, 1979. Applicant: DEEP SOUTH TRUCKING, INC., Hwy. 11 North, P.O. Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main Street, P.O. Box 696, Purvis, MS 39475. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber, sawdust, and wood chips*, from the facilities of Purvis Hardwood Lumber Co., Inc., and Purvis Plywood & Lumber Co., Inc., at Purvis, MS, (a) to the retail yard of Purvis Hardwood Lumber Co., Inc., and Purvis Plywood & Lumber Co., Inc., at Slidell, LA, and (b) to points in AL, AR, AZ, CA, FL, GA, IA, IL, IN, KS, KY, LA, MI, MS, MO, MN, NE, NM, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI, under continuing contracts with Purvis Hardwood Lumber Co., Inc., and Purvis Plywood & Lumber Co., Inc., of Purvis, MS. (Hearing site: Hattiesburg or Biloxi, MS.)

MC 145242 (Sub-7F), filed January 30, 1979. Applicant: CASE HEAVY HAULING, INC., P.O. Box 267, Warren, OH 44482. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum articles*, from the facilities of Wells Aluminum Southeast, Inc., at Belton, SC, to points in IN, MI, OH, NY, NJ, and PA. (Hearing site: Columbus, OH.)

MC 145273 (Sub-2F), filed November 2, 1978. Applicant: CLEVELAND FREIGHT LINES, INC., 17877 St. Clair Avenue, Cleveland, OH 44110. Representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *synthetic fiber yarn*, and *materials, equipment, and supplies* used in the manufacture of synthetic fiber yarn (except commodities in bulk), between Painesville, OH, on the one hand, and, on the other, points in AL, GA, KY, NJ, NY, NC, PA, SC, TN, and VA, under continuing contracts with IRC Fibers Co., of Wayne, NJ. Condition: Issuance of a Permit is subject to the coincidental cancellation, at applicant's written request, of the outstanding certificate of registration, MC 99597 (Sub-1). (Hearing site: Cleveland, OH.)

Note.—Carrier holds Certificate of Registration, MC 99597 (Sub-1) and has filed an application to convert said certificate of registration to a certificate of public convenience and necessity.

MC 145613 (Sub-2F), filed January 18, 1979. Applicant: TOBAR ENTERPRISES, INC., P.O. Box 16188, Salt Lake City, UT 84116. Representative: Kent S. Pantone, 2944 Willow Creek Drive, Sandy, UT

84070. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of apparel, between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, WA, WY, and UT, under continuing contract(s) with Pyke Manufacturing Company, of Salt Lake City, UT. (Hearing site: Salt Lake City, UT.)

MC 145743 (Sub-5F), filed January 30, 1979. Applicant: TFS, INC., P.O. Box 126, Rural Route No. 2, Grand Island, NE. 68801. Representative: Lavern Holdeman, 521 South 12th Street, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from York, NE, to points in CA, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Brand Island or Lincoln, NE.)

Note.—Dual operations may be involved.

MC 146102F, filed December 20, 1978. Applicant: TAMWAY CORPORATION, 401 Poinsettia Drive, Simpsonville, SC 29681. Representative: Eric Meierhoefer, Suite 423, 1511 K Steet, N.W., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *tools and machinery*, and (2) *materials and supplies* used in the manufacture and sale of the commodities in (1) above, between Greenville, SC, on the one hand, and the on the other, points in the United States, (except AK and HI). (Hearing site: Greenville, SC.)

FF-443 (Sub-1F), filed January 19, 1979. Applicant: NORTHWEST CONSOLIDATORS, INC., P.O. Box 25588, Seattle, WA 98125. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. To operate as a *freight forwarder*, in interstate or foreign commerce, through the use of the facilities of surface common carriers, in the transportation of (a) *used household goods and unaccompanied baggage*, and (b) *used automobiles*, between points in the United States, (including AK and HI), restricted in (b) above to the transportation of traffic moving in foreign commerce only. Condition: Issuance of a permit is subject to the coincidental cancellation, at applicant's written request, of the outstanding permit in FF-443, issued March 13, 1975. (Hearing site: Seattle, WA.)

[Permanent Authority Decisions Volume No. 30]
[FR Doc. 79-11921 Filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

Petition for Declaratory Order—Occasional Transportation Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: By petition filed March 19, 1979, National Tank Truck Carriers, Inc., seeks a ruling that the emergency unloading and transportation of lading from a wrecked or disabled tank vehicle or barge is exempt under 49 U.S.C. § 10526(b)(2) [formerly section 203(b)(9) of the Interstate Commerce Act] as transportation provided only occasionally and not as a regular occupation or business.

DATES: Comments must be received on or before May 17, 1979.

ADDRESS: Send comments to:

Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

Petitioner's Representative: Harry C. Ames, Jr., 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7292, or J. Carol Brooks, (202) 275-7540.

SUPPLEMENTARY INFORMATION: Section 10526(b)(2) of Title 49, Subtitle IV, U.S. Code [formerly, section 203(b)(9) of the Interstate Commerce Act], provides that, except to the extent the Commission finds it necessary to exercise jurisdiction to carry out the transportation policy of section 10101 of the title, the Commission does not have jurisdiction over "* * * transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business * * *"

Petitioner represents more than 200 regulated motor carriers engaged in the transportation of commodities in bulk, in tank vehicles. These carriers are occasionally called upon to unload and transport lading from wrecked or disabled tank vehicles and barges. Often such transportation involves considerable risk and potential liability due to the hazardous nature of the commodities and the possibility of leakage, fire or explosion.

Petitioner asserts that set rates and tariff provisions are inadequate to cover the broad range of factors which may arise in providing this type of transportation. It contends that carriers should be free to contract for these emergency services on an individual basis to protect themselves from the particular risks and liabilities involved in a given situation. Petitioner contends further that, because the involved transportation is performed only on an occasional basis, it is not part of a regular trade or business.

For these reasons, petitioner believes that the transportation is exempt under 49 U.S.C. 10526(b)(2), and it requests a formal ruling to that effect. Petitioner asserts that a grant of the relief sought will not constitute a major Federal action significantly affecting the quality of the human environment.

No oral hearing is contemplated. Any person (including petitioner) desiring to participate in this proceeding shall file an original and fifteen (15) copies (wherever possible) of written representations, views, or arguments. A copy of each representation shall be filed on petitioner's representative.

Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th St. and Constitution Ave., Washington, D.C., during regular business hours.

Notice to the general public of these matters will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy with the Director, Office of the Federal Register.

H. G. Homme, Jr.,
Secretary.

[No. MC-C-10324]
[FR Doc. 79-11920 Filed 4-16-79; 8:45 am]
BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Decision—Notice

Correction

In FR Doc. 78-34029, appearing at page 57385, in the issue of Thursday, December 7, 1978, make the following corrections:

(1) On page 57389, in the third column, the fourth full paragraph designated as MC 114334 (Sub-38F), the second from the last line, insert "MS, TX, LA, OK" between "in" and "AR".

(2) On page 57394, in the third column, the second paragraph designated as MC 142603 (Sub-5F), in the twelfth line, insert the abbreviation "MI" between "MD" and "NC".

[Decisions Volume No. 52]
BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 75
Tuesday, April 17, 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).

CONTENTS

	Items
Federal Communications Commission	1
Federal Deposit Insurance Corporation	2
Federal Home Loan Bank Board	3
Federal Maritime Commission	4
Federal Reserve System	5
National Railroad Passenger Corporation	6
Nuclear Regulatory Commission	7
Tennessee Valley Authority	8

1

FEDERAL COMMUNCATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, April 19, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

Common Carrier—1—Supplemental Notice of Inquiry and Proposed Rulemaking in CC Docket No. 78-72 (In the Matter of MTS and WATS Market Structure).

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: April 12, 1979.

[S-743-79 Filed 4-13-79; 3:13 pm]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting scheduled for 2:00 p.m. on Monday, April 16, 1979, the Corporation's Board of Directors will also consider, in addition to the items already scheduled for consideration, a memorandum and resolution proposing the publication for comment of a new Part 346 of the Corporation's rules and regulations, to be entitled "Foreign Banks," in implementation of the International Banking Act of 1978.

Dated: April 12, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Acting Executive Secretary.

[S-740-79 Filed 4-13-79; 11:11 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., April 19, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Limited Facility Application—First Federal Savings and Loan Association of Mid-Florida, Deland, Florida.

Application for Bank Membership—Commonwealth Savings Bank, Milwaukee, Wisconsin.

Branch Office Application—First Federal Savings and Loan Association of Camden, Camden, South Carolina.

Application for Bank Membership—Androscoggin Savings Bank, Lewiston, Maine.

Application for Permission to Convert to an Arkansas Chartered Stock Association—Peoples Savings and Loan Association, Little Rock Arkansas.

Application for Service Corporation Activity—Investment in Private Mortgage Insurance Company—Century FS & LA, Pittsburgh, Pennsylvania.

Branch Office Application—Guaranty Federal Savings and Loan Association, Galveston, Texas.

Consideration of Travel Voucher Resolution for Federal Savings and Loan Advisory Council.

Association Request for Reconsideration of Liquidity Penalty—Majestic Savings and Loan Association, Denver, Colorado.

Consideration of Appointment of Director, Federal Home Loan Bank of Chicago.

Branch Office Application—Citizens Federal Savings and Loan Association of Dayton, Dayton, Ohio.

Branch Office Application—Great Western Union Federal Savings and Loan Association, Seattle, Washington.

Application for Extension of Time to Comply with Conditions for Insurance of Accounts and Bank Membership—Madison County Building and Loan Association, Madison, Nebraska.

Application for Extension of Time to Open Branch Office—Central Federal Savings and Loan Association, San Diego, California.

Consideration of Appointment of Legal Counsel—Federal Home Loan Bank of Topeka.

Consideration of Proposed Regulations Regarding Regulatory Implementation of Amendments to § 5(c) of the Home Owners' Loan Act of 1933.

Limited Facility Application—State Federal Savings and Loan Association, Beatrice, Nebraska.

No. 276, April 12, 1979.

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., April 19, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Consideration of Audit Report.

No. 227, April 12, 1979.

[S-737-79 Filed 4-13-79; 9:03 am]

BILLING CODE 6720-01-M

4

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 21954, Apr. 12, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Apr. 18, 1979.

CHANGES IN THE MEETING: Withdrawal of the following item from the open session:

4. Proposed Rule on Standards for Intervention in Commission Docketed Proceedings.

Addition of the following item to the closed session:

2. Compliance with conditional order of approval of Agreement No. 10116.

[S-742-79 Filed 4-13-79; 12:00 pm]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Friday, April 20, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Target budget for the proposed building project for the Baltimore branch of the Federal Reserve Bank of Richmond.
2. Proposed purchasers, under competitive bidding, of computer equipment within the Federal Reserve System.
3. Proposed reorganization of the administration of the Federal Reserve Employee Benefits System.
4. Proposed revisions to the Board's policy regarding consultants.
5. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
6. 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 13, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board

[S–739–79 Filed 4–13–79; 9:03 am]

BILLING CODE 5210–01–M

6

NATIONAL RAILROAD PASSENGER CORPORATION.

In accordance with rule 4a. of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on April 25, 1979.

A. The meeting will be held on Wednesday, April 25, 1979, in the National Guard Association Building, 3rd Floor, 1 Massachusetts Avenue, Northwest, Washington, D.C. beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation

Meeting of the Board of Directors—April 25, 1979

Closed session (9:30)

1. Internal personnel matters.
2. Litigation matters.

Open session (10:30)

3. Approval of minutes of regular meeting of March 28, 1979.
4. Resolution of appreciation—Donald P. Jacobs.
5. Commitment approval requests:

79–58 ARTS Ticket Scanning for Data Entry.

78–14–S1 Supplemental Funding for Rehabilitation of No. 3 Generator, Richmond, Pennsylvania.

78–37–S1 Installation of Powered Outriggers to One Wreck Derrick.

78–21–S1 Fuel Tender "In Service" Tests.

6. Approval of contract for material management consulting services.
7. Approval of contract for reservation and information system examination.
8. Board Committee Reports: Equipment, Northeast Corridor Improvement Project, Organization and Compensation, and Planning and Finance.
9. President's report.
10. New business.
11. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistant Corporate Secretary at 202–383–3971.

Dated: April 13, 1979.

T. Page Sharp,

Assistant Corporate Secretary.

[S–741–79 Filed 4–13–79; 11:13 am]

BILLING CODE 4910–58–M

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Thursday, April 19 and Friday, April 20.

PLACE: Chairman's conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open

MATTERS TO BE CONSIDERED:

Thursday, April 19, 9:30 a.m.

1. Briefing on operational safety data—Gathering and analysis (approximately 2 hours—public meeting).
2. Affirmation session (Approximately 10 minutes—public meeting).
   a. Kranish FOIA appeal 79–A–3.
   b. Appointment of ACRS member.

Friday, April 20, 9:30 a.m.

1. Staff Briefing on five-plant shutdown (Seismic design) (tentative) (approximately 1½ hours—public meeting).

Additional Information

1. The meeting with ACRS on Tuesday, April 17 will begin at 3:30 p.m., rather than 2:30 p.m. as previously announced.
2. The Commission continued discussion of commission investigation of Three Mile Island (closed, exemptions 5, 9, 10) at 4 p.m., Tuesday, April 10.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, 202–634–1410.

Dated: April 12, 1979.

Walter Magee,

Office of the Secretary.

[S–744–79 Filed 4–13–79; 3:57 pm]

BILLING CODE 7590–01–M

8

TENNESSEE VALLEY AUTHORITY: Meeting No. 1216).

TIME AND DATE: 9:30 a.m., Thursday, April 19, 1979.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Req. No. 824081—Radiation monitoring systems (GEMS) for Hartsvelle and Phipps Band Nuclear Plants.
2. Req. No. 590466—Procurement of word processing system for Computing Services Branch.

New Business

Personnel Actions

*1. Change of status for Ralph H. Brooks from Chief, Water Quality and Ecology Branch, to Assistant Director of Water Resources.
2. Change of status for Gene Farmer from Chief, Construction Services Branch, to Assistant Director of Construction.
3. Change of status for Oscar E. Gray III from Nuclear Engineer, Office of Power, to Program Coordinator, Office of the General Manager.

Consulting and Personal Service Contracts

1. Renewal of consulting contract with Kibbe & Associates, Salt Lake City, Utah, for advice and assistance in connection with the acquisition of nuclear raw materials, requested by the Office of Power.
2. Amendment and extension of personal service contract with CDI Corporation, Philadelphia, Pennsylvania, for engineering support services, requested by the Office of Engineering Design and Construction.
3. Amendment and extension of personal service contract with Butler Service Group, Inc., Montvale, New Jersey, for engineering support services, requested by the Office of Engineering Design and Construction.

Project Authorizations

1. No. 3424—Repair bridge deck over Watts Bar Dam.
2. No. 3433—Replace boiler reheater platen elements at John Savier Steam Plant, Units 1–3.
3. No. 3363.1—Minor modifications to the Watts Bar Nuclear Plant and Phase II of the Watts Bar Waste Heat Park development.
4. No. 3439—1–MW magnesium oxide pilot plant at Colbert Steam Plant.

Power Items

1. Lease agreement with the East Mississippi Electric Power Association—14.68-mile section of TVA's Philadelphia-DeKalb 46-kV line.
2. Lease and amendatory agreement with the city of Pulaski, Tennessee, covering arrangeemtns for 161-kV delivery at TVA's Pulaski 161-kV substation.
3. Lease and amendatory agreement with the city of Lexington, Tennessee, covering arrangements for 161-kV delivery at TVA's Chesterfield 161-kV substation.
4. Memorandum of understanding with the Department of the Army covering

*These items were approved by individual Board members. This would give formal ratification to the Board's action.

arrangements for TVA to make transmission line modifications for the Tennessee-Tombigbee Waterway Project between Columbus and Aberdeen, Mississippi.

Real Property Transactions

1. Filing of condemnation suits.

Unclassified

1. Revised TVA policy code relating to procurement of property and services.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–566–1401.

Dated: April 12, 1979.

[S–738–79 Filed 4–13–79; 9:03 am]

BILLING CODE 8120–01–M

federal register

Tuesday
April 17, 1979

Part II

Department of Energy

Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

DEPARTMENT OF ENERGY

10 CFR Part 455

Technical Assistance and Energy Conservation Measures: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing a final regulation for cost sharing grant programs to reduce the energy use and anticipated energy costs for (1) schools and hospitals and (2) buildings owned by units of local government and public care institutions. These objectives are to be achieved by providing financial assistance for identifying energy conservation maintenance and operating procedures; conducting technical assistance programs to identify and evaluate attainable energy conservation objectives; and, for schools and hospitals, acquiring and installing energy conservation measures, including solar and other renewable resource measures. This is the second and final segment of DOE regulations for implementation of programs established pursuant to Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206. The first portion of the programs provides financial assistance for the conduct of preliminary energy audits and energy audits for schools, hospitals, units of local government and public care institutions pursuant to regulations published in the **Federal Register** on April 2, 1979 (44 FR 19340). Participation in both phases of the programs is voluntary. The Secretary may make grants to schools, hospitals, units of local government and public care institutions for technical assistance programs; to schools and hospitals for energy conservation measures, including solar and other renewable resource measures; and to States for defraying administrative costs.

DATES: This regulation is effective April 17, 1979. States must submit State Plans to the Secretary on or before August 15, 1979. The first grant program cycle for technical assistance and energy conservation measures, including solar and other renewable resource measures, will begin on April 17, 1979 and will end on February 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Michael Willingham, or Ronald Milner, Institutional Buildings Grants Programs Division, Office of Conservation and Solar Applications, Room 4117, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–4149.

Lewis W. Shollenberger, Jr., or Dennis M. Moore, Office of the General Counsel, Department of Energy, Room 3224, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–4011.

Mark Friedrichs, Office of Policy and Evaluation, Department of Energy, Room 5316, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633–8595.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Elements of the Program
III. Notice of Grant Program Cycle
IV. Discussion of Major Comments and Revisions
V. Additional Information

I. Introduction

With the issuance of this final regulation, the Department of Energy (DOE) amends Chapter II of Title 10, Code of Federal Regulations, by adding Subparts C through I to Part 455. This regulation fulfills the remaining requirements of Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3206, which amended Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 871, by adding Parts G and H, to establish cost sharing energy conservation grant programs to fund technical assistance programs for schools, hospitals, buildings owned by units of local government and public care institutions, and to fund the acquisition and installation of energy conservation measures, including solar and other renewable resource measures, for schools and hospitals.

On January 5, 1979, DOE published a proposed regulation which described this grant progam and solicited comments from interested persons (44 FR 1580). DOE received and considered 324 written comments and the testimony of 54 persons presented at hearings held in Washington, D.C.; Chicago, Illinois; and Seattle, Washington, on January 22–24, 1979. Summaries of the major comments received, a number of which resulted in changes to the final rule, are discussed below.

On April 2, 1979, DOE published a final regulation implementing the first portion of the energy conservation grant programs established under Title III of NECPA (44 FR 19340). The first portion of these programs will provide financial assistance for the conduct of preliminary energy audits and energy audits to identify buildings suitable for further energy conservation analysis, to identify maintenance and operating changes which could save energy, and to estimate the State-wide need and potential for conserving energy in eligible institutions.

This second portion of the energy conservation grant programs authorized by Title III of NECPA provides financial assistance for schools, hospitals, units of local government and public care institutions and coordinating agencies for conducting technical assistance programs to identify energy and cost savings likely to be realized as a result of modifying maintenance and operating procedures in a building and as a result of implementing energy conservation measures, including solar and other renewable resource measures, in a building. This regulation also provides financial assistance for schools and hospitals and coordinating agencies to acquire and install energy conservation measures to reduce energy consumption or to allow the use of alternative energy sources.

II. Elements of the Program

Initially, a State must formulate a State Plan for the operation of these grant programs and have the State Plan approved by DOE. Upon approval of the State Plan, a State energy agency will receive, review and rank applications for financial assistance for eligible schools, hospitals, units of local government and public care institutions. Applicants must prepare and forward their applications to the State in accordance with this regulation and the approved State Plan. If applications are determined by the State to be eligible for assistance under this regulation and the State Plan, the State will rank all buildings covered by those applications in order of priority for funding. The State will then forward to DOE once each grant program cycle all eligible applications together with its rankings of the buildings covered by those applications. Among other things, the State will also identify those buildings proposed by the State for grant funding, based on the priority ranking, and set forth the funding, by building, recommended for each applicant.

Upon approval of State recommendations, DOE will make grant awards to applicants for up to 50 percent of the cost of a technical assistance program or energy conservation measure. In addition, DOE may make grant awards in excess of 50 percent of total costs to schools or

hospitals in a class of severe hardship in amounts recommended by the State in accordance with its State Plan for up to 90 percent of the cost of a technical assistance program or energy conservation measure. The total amount of all such hardship funding in a State may not exceed 10 percent of funds allocated to that State in a grant program cycle.

A State may also receive grants in amounts not exceeding 5 percent of all grants made in a State during a given grant program cycle for the purposes of defraying the costs of administering technical assistance programs and energy conservation measures grants.

III. Notice of Grant Program Cycle

DOE has elected to use "grant program cycles" for all NECPA Title III grant programs. For purposes of making grants for technical assistance programs and energy conservation measures, including solar and other renewable resource measures, the first grant program cycle begins on the date of publication of this regulation. State Plans under this regulation are due 120 days from the beginning of the cycle. For fiscal year 1978, NECPA authorizes appropriations in the amount of $180 million for schools and hospitals and $17.5 million for units of local government and public care institutions. Subject to the availability of these monies, Table 5 presents the amounts allocated to States for the first grant program cycle. Except as may otherwise be specified by the Secretary, this first grant program cycle for technical assistance and energy conservation measures shall end February 1, 1980.

IV. Discussion of Major Comments and Revisions

State Plan Submissions

Sections 394(a) and 400D(a) of EPCA direct the Secretary to invite State energy agencies of each State to submit State plans to DOE within 90 days after the effective date of this regulation. However, the law also permits the establishment of a longer period of time for this purpose if there is "good cause" for such action. Because the final regulation for preliminary energy audits and energy audits has been so recently issued, and since the development of State Plans in great measure depends on the results of the preliminary energy audits conducted in accordance with those final regulations, there is good cause for extending the time in which State Plans may be submitted to DOE. Accordingly, § 455.91 has been revised to permit 120 days, rather than the 90 days proposed, for their submission. This extension should permit States to conduct a sufficient number of preliminary energy audits to insure complete and comprehensive State energy planning.

Eligible Institutions and Buildings

Several comments addressed the range of institutions that may be eligible to receive grant funding. The definitions that determine which institutions are eligible for Federal grant funds are set forth in 10 CFR 455.2. States, as a result of their licensing and oversight authorities with respect to such institutions, are in the best position to apply those definitions to institutions within their jurisdictions when they review and evaluate grant applications.

Comments also addressed the range of buildings that may be eligible for Federal financial assistance. Buildings covered by applications from eligible institutions that house resources for the arts, humanities and for historic preservation (such as libraries, arts centers, etc.) in connection with schools, hospitals, units of local government and public care institutions may be eligible for financial assistance if such buildings conform to the requirements of Part 455. Although buildings owned by local educational agencies and used primarily as administrative buildings are eligible for preliminary energy audit and energy audit funding, such administrative buildings are not eligible for grants for technical assistance programs or energy conservation measures.

Energy Conservation Maintenance and Operating Procedures

An important element of these grants programs is the identification of energy conservation maintenance and operating procedures which require no significant expenditure of funds. The implementation of such procedures, once identified by an energy audit or technical assistance program, should result in substantial energy savings. Therefore, as a prerequisite to further participation in this program, the proposed regulation required applicants to implement all identified energy conservation maintenance and operating procedures prior to submitting a grant application for a technical assistance program or energy conservation measure.

This requirement has been modified in the final regulation to permit applicants to be eligible for technical assistance program or energy conservation measure grants without having implemented all energy conservation maintenance and operating procedures if satisfactory written justification for not implementing any such procedure is provided. Such justification will be considered satisfactory if it demonstrates that implementation of a maintenance and operating procedure recommended by an energy audit report or technical assistance report would violate an applicable health or safety code, would require special training for maintenance or operating personnel which cannot be completed prior to submitting a grant application, or would create other such overriding circumstances that make implementation impractical.

Technical Assistance Analyst Qualifications

NECPA directs that DOE establish factors which may be used by a State in prescribing criteria for identifying persons qualified to conduct technical assistance programs. It is essential that only those individuals possessing the relevant background, training and experience be considered as qualified technical assistance analysts. Therefore the proposed regulation required as a minimum that technical assistance analysts have experience in energy conservation and be registered professional engineers or architect-engineer teams. Numerous comments were received regarding these qualification factors. Among other things, it was suggested that the qualifications were overly restrictive and that they excluded certain groups from participating in the technical assistance phase of the program. Others suggested that States should be responsible for establishing programs for qualifying technical assistance analysts. A number of comments stated that many architects and architectural firms have the necessary experience to perform technical assistance programs, and suggested that architects be permitted to conduct a technical assistance program independently.

It is the intent of this regulation to establish minimum qualifications for technical assistance analysts to insure that participating institutions select individuals or firms able to perform the very complex and detailed technical assistance program. Accordingly, the final regulation specifies that the technical assistance analyst should be a registered professional engineer or, ideally, an architect and an engineer working as a team. However, the final regulation has been modified to permit a State to specify such alternative qualifications as it may deem appropriate and as are included in its approved State Plan. Such alternative

qualifications must insure that the technical assistance analyst has sufficient experience and training to perform all of the minimum requirements of a technical assistance program.

An architect-engineer team provides an especially suitable combination of professional skills to perform the comprehensive analysis of the building or buildings required for a technical assistance program. Several comments raised questions concerning the effect of the minimum requirements for technical assistance analysts and the contractual relationship between architectural firms and engineering firms which desire to perform jointly technical assistance programs. No prior relationship is required nor was it DOE's intent to preclude either member of the team, individually, from functioning as the prime contractor for a technical assistance program.

Several comments pointed out that the provision which requires that technical assistance analysts be free from conflicting financial interests may prevent technical assistance analysts from performing the detailed design functions which may be necessary under the energy conservation measures phase of these programs. This provision is intended to exclude those individuals having a financial interest in the products or equipment acquired and installed under an energy conservation measures grant. A State must establish procedures, as a part of its State Plan, to implement these requirements. These procedures must also exclude any other individuals having financial interests which conflict with the proper performance of their duties. This requirement should not be construed to preclude technical assistance analysts from performing detailed design or inspection services under the energy conservation measures phase of these programs.

Technical Assistance Procedures

It is essential that a technical assistance program consist of a thorough survey and analysis of both the building envelope and the building's energy-using systems. A few comments suggested that thermographic inspections of the building be required as part of a technical assistance program. While such methods are a valuable tool in analyzing a building, the final regulation does not specify any methods to be utilized as part of a technical assistance program. It is left to the discretion of the technical assistance analyst to select the methods which, in the analyst's judgment, are the most appropriate for the building which is being analyzed.

Eligible Energy Conservation Measures

Several comments suggested that DOE expand the grant programs for schools and hospitals to fund experimental energy conservation measures. A list of previously demonstrated energy conservation measures, including solar and other renewable resource measures, is set forth in § 455.52. Solar measures eligible for funding include both active and passive solar energy systems, as well as other renewable resource measures. This list is not all inclusive. Other measures identified in a technical assistance program or an energy audit performed pursuant to Subpart C of 10 CFR Part 450, which have an average simple payback of more than 1 year and less than 15 years, may be included in any grant application. A complete description of such measures must accompany the application. The description must include calculations and other technical data which indicate the projected cost and energy savings of such measures. An experimental energy conservation measure for which an applicant cannot adequately project costs and energy savings will not be considered for funding.

Consideration of Solar and Other Renewable Resource Measures

In view of comments received, and due to the desirability of increased utilization of solar energy to reduce consumption of non-renewable energy resources, the final regulation reflects greater emphasis on conversions to solar and other renewable resource systems, where appropriate. Specifically, certain basic data regarding a building's potential for solar applications will be collected during the preliminary energy audit and energy audit phase of the program. Upon analysis of preliminary energy audit data, the State should be able to specify in its State Plan the extent to which, and by which methods, utilization of solar systems will be encouraged within that State. Each technical assistance program must include an evaluation of the building's potential for solar conversion and an identification of any known zoning ordinances and building codes which may place restrictions on or barriers to the installation of solar energy systems. It is intended that, initially, the technical assistance analyst will evaluate the data collected during the preliminary energy audit and energy audit phase of the program. If, upon completion of this initial evaluation, it is determined that the building has potential for conversion to solar or other renewable resource measures, the technical assistance analyst will undertake a more detailed analysis of the costs and energy cost savings associated with the acquisition and installation of such measures.

Leased Equipment

Several comments suggested that the installation and use of equipment which is normally leased, such as computer control systems, qualify as an eligible energy conservation measure. The final regulation has been changed to permit grants for the costs of installing and connecting leased equipment, such as a computer-operated energy monitoring or control system. However, the recurring lease costs associated with leased equipment, which typically include maintenance and service costs, are not eligible for funding. To calculate the simple payback period for leased equipment, the procedure set forth in § 455.52(w) shall be used. This procedure is required to insure that recurring lease costs are considered in the overall evaluation of such a proposed measure.

Starting Date for Eligible Programs and Measures

Several comments requested a change in a provision of the proposed regulation to permit the funding of technical assistance programs and energy conservation measures, including solar and other renewable resource measures, begun prior to November 9, 1978. The conference committee report accompanying NECPA indicates that project costs incurred prior to November 9, 1978 are not to be considered eligible for grant funding. Accordingly, this suggestion has not been adopted. However, expenditures for a technical assistance program commenced on or after November 9, 1978, may be wholly or partially classified by the Secretary as non-Federal funds for the purposes of matching a grant for the acquisition and installation of energy conservation measures identified by such technical assistance program.

Applicant's Submissions to States

A number of comments raised questions concerning the manner in which institutions are to file applications for technical assistance program grants and energy conservation measures grants. The requirements governing applications for grant funds are contained in Subpart E of Part 455 and have been modified only slightly from their proposed form. Since applicants must forward grant

applications to a State for review, evaluation and ranking, applicants may also be required to submit their grant applications in conformity with any additional procedures or requirements prescribed by the State in the State Plan. This regulation, however, does not prohibit two or more institutions from submitting a single application to the State. Indeed, DOE encourages States to permit institutions to apply for grant funds through a coordinating agency (such as the State, a State hospital or school facilities agency, or a regional or district organization representing schools or hospitals) which could act as an agent for institutions whose buildings are covered by the coordinating agency's application. The use of coordinating agencies may: (1) Reduce the administrative workload for institutions, (2) introduce economies of scale for applicants, (3) allow institutions, which might otherwise lack the expertise or resources, to participate, and (4) expedite the processing of applications and the administration of the program.

State Evaluation and Ranking of Grant Applications

The State evaluation and ranking requirements set forth in §§ 455.70 and 455.71 elicited a number of comments and requests for clarification. These provisions have been revised primarily to incorporate several suggested changes to the ranking criteria and to clarify the procedure to be used for ranking applications for technical assistance programs and energy conservation measures.

The evaluation and ranking process prescribed by Subpart F requires the State to make two determinations. First, a State will review and evaluate an application to determine whether the applicant is eligible for financial assistance and thus a candidate for inclusion in the State's ranking process. Eligible applicants must conform to all of the requirements of Subparts C, D and E of Part 455, the requirements of the approved State Plan, any State environmental laws, and any other applicable laws or regulations. Applications of schools and hospitals must receive certifications from the State school or hospital facilities agency, as the case may be, in order to be eligible for Federal assistance. This certification process will take place concurrently with the State's evaluation and ranking in a manner such that no unnecessary delay results. An applicant that does not conform to these requirements or that fails to receive certification is not eligible for Federal assistance and its application should be returned immediately to it, together with an explanation of the application's deficiencies.

Second, a State will rank buildings for which an eligible applicant has requested financial assistance to determine, in accordance with the criteria established in its State Plan, which buildings should be recommended for up to 50 percent funding. Although a few comments recommended that States rank metered facilities rather than buildings, DOE has retained the more refined requirement of a building-by-building ranking, since estimated energy consumption for individual buildings can be calculated using standard engineering procedures.

Section 455.71(a) establishes detailed criteria for ranking buildings for technical assistance programs. Buildings will be ranked on the basis of energy conservation potential as indicated by energy audits of those buildings and in accordance with the methods prescribed by the State Plan. Preference will be given to buildings for which an energy audit was completed without the use of Federal funds in the case of buildings having equivalent energy conservation potential

The ranking criteria applicable to energy conservation measures set forth in § 455.71(b) have been modified only slightly to reflect, among other things, a preference for savings of oil over savings of natural gas. Weights for each prescribed criterion will be assigned by the State.

The product of the State ranking process for technical assistance programs and energy conservation measures will be three lists of buildings ranked in order of descending priority based upon the criteria prescribed by § 455.71. There will be a separate list of buildings for technical assistance programs for units of local government and public care institutions, for technical assistance programs for schools and hospitals, and for energy conservation measures for schools and hospitals.

At the request of an applicant for an energy conservation measure grant, a group of buildings may be ranked as a single building if the application requests funding for the acquisition and installation of a single energy conservation measure which directly involves all of the buildings. This permits applicants the option to seek funding for measures that affect more than one building. In such cases, an applicant will submit the average simple payback of the single measure proposed for all of the buildings affected by that measure as well as averaged data for all the buildings for the other ranking criteria. States will rank the buildings covered by such an application based upon those averages.

Within each list, a State will indicate the ranking and the amount of financial assistance requested for each eligible building. The State will also indicate the amount of funding recommended by the State for each building. Where the amount recommended for any building by the State is less than the amount requested by the applicant, the State shall also indicate the reason for such recommendation. Those buildings ranking highest on the list will receive financial assistance within the amount of funds allocated for each State for grants up to 50 percent of eligible costs.

The State will perform two additional reviews of each list of school and hospital buildings. First, the State must assure that neither schools nor hospitals are recommended for more than 70 percent of the total funds allocated for technical assistance programs and energy conservation measures.

Second, the State must evaluate school and hospital buildings for which "severe hardship" claims have been made. With respect to those school and hospital applications requesting such funding, only those applications which would otherwise qualify for grants up to 50 percent may be considered by the State. For such qualified applications, the State must perform a separate evaluation of the relative need of each applicant. The evaluation must be performed in accordance with the procedures established by the State in its State Plan in accordance with the criteria set forth in § 455.72(d)(2). The results of this evaluation will determine the amount of additional Federal funding, in excess of 50 percent, for which each applicant is qualified. After this evaluation has been completed, buildings in a class of severe hardship shall be recommended for funding in descending order of their energy saving potential, determined pursuant to §§ 455.71 (a) and (b). These results will be recorded within each list for schools and hospitals by indicating: (1) The amount of additional hardship funding requested for each building by each application qualified for hardship funding; and (2) the amount of hardship funding recommended by the State based upon relative need, as determined in accordance with its State Plan, to the limit of the hardship funds available.

Requests for hardship funding, as determined by the State and indicated in the State ranking, will be approved by DOE to the extent that the total of all

such requests for hardship funding does not exceed 10 percent of the total allocation of funds to the State for schools and hospitals in the applicable grant programs cycle.

Prior to forwarding applications to the Secretary, each State must certify that each institution recommended for funding in any amount has given its assurance that it is willing and able to participate in the program based on the amounts recommended by the State and set forth in the State's ranking of all applications pursuant to § 455.71.

It is anticipated that in some cases the amounts requested by eligible applicants will be less than the total amount allocated to the State in a particular grant program cycle. In such cases, the State is exempt from the ranking requirements of § 455.71. With respect to eligible applications for schools and hospitals, the State is exempt from the ranking requirements only if the total amount requested for grants up to 50 percent is less than or equal to the funds available for such grants and the total amount recommended for hardship funding is less than or equal to the amount reserved by the State for that purpose. Unobligated funds remaining at the close of a grant program cycle will be reallocated, if available, to all States in the succeeding grant program cycle.

Economic Analysis Ranking Factor

NECPA requires that DOE establish criteria for ranking applications for energy conservation measures, including solar and other renewable resource measures. The primary ranking factor selected for this phase of the program is the measure's cost-effectiveness. The proposed regulation specified a simple payback methodology for this ranking factor. A number of comments were received regarding the use of this methodology. Most of the comments indicated that simple payback is not as accurate in determining the cost-effectiveness of a measure as is life-cycle costing. A life-cycle costing methodology considers the time value of money, fuel price escalations and future operating, maintenance and other costs over the life of the building or measure. The use of discounted payback was also suggested. Because simple payback provides only an approximate indication of actual cost-effectiveness, DOE has undertaken the development of a life-cycle costing methodology which it currently plans to adopt for evaluating energy conservation measures under this program. However, this methodology will not be available for use during the first grant program cycle. Therefore, the regulation specifies the use of the simple payback methodology, but encourages institutions to obtain a life-cycle cost analysis for use in their decision-making process for the first grant program cycle.

Several comments were also received regarding the 15-year simple payback period limitation on energy conservation measures, including solar and other renewable resource measures. Comments were approximately balanced between those favoring a shorter payback period limitation and those favoring a longer payback period limitation. Other comments suggested that States be responsible for determining the limitation. No change has been made to the final regulation. The 15-year simple payback limitation on eligible measures approximates the limit that would result if measures were determined to be cost-effective by a life-cycle cost analysis (assuming a 10-percent real discount rate, current fuel price forecasts and a 25-year useful life of the measure or building). Since DOE intends to amend this regulation to substitute life-cycle cost analysis for simple payback, this provision may be deleted at that time.

State Forwarding of Grant Applications

A number of comments suggested changes to the requirement of § 455.72 that States forward grant applications to DOE only once each grant program cycle. Some comments proposed to permit States to forward applications for financial assistance continuously or at several times during the grant program cycle to reduce administrative burdens which might delay the attainment of energy savings. Since NECPA specifically limits the frequency of application submittals, this provision has not been altered. Further, this single submittal is likely to result in a more equitable allocation of the available funds by requiring the simultaneous evaluation of all applications received during a single grant program cycle.

Grant Awards

Several comments requested that the regulations clarify whether additional funding will be available to an applicant in the same or a subsequent grant program cycle to complete a technical assistance program or energy conservation measure that has already been funded by a grant. Section 455.80 has been amended to specify that no additional assistance will be available to fund cost overruns. In order to promote accurate cost calculation and thereby assure that only cost-effective technical assistance programs and energy conservation measures, including solar or other renewable resource measures, receive Federal assistance, DOE shall award only one grant for any technical assistance program or energy conservation measure for any building.

State Administrative Costs

The subject of grant awards to defray State expenses incurred in administration of this program elicited numerous comments from States and institutions. Several comments favored the proposed provision allowing 50 percent matching grants to States in amounts not exceeding 5 percent of all grants awarded to institutions within a State. Some comments, however, suggested awarding such grants as early as possible in the grant program cycle to help cover the significant expenditures required for a State to develop a State Plan and to establish its system for accepting and reviewing grant applications before they are submitted to DOE. It was also suggested that DOE raise the allowable percentage of funding for the States.

DOE still anticipates that 5 percent of the grants awarded within a State will provide the State with adequate funding, when coupled with State matching funds, to administer effectively this phase of the program. However, §§ 455.62 and 455.83 have been revised to permit earlier grant awards for this purpose. As revised, a State may apply for an administrative expense grant concurrently with submission of its State Plan. For subsequent grant program cycles, a State may apply for an administrative expense grant immediately upon publication by DOE of the amounts allocated for among the States for that grant program cycle. Up to 2 percent of the amounts allocated to the State for grants for technical assistance programs and energy conservation measures will be available for administrative expense grants. For the first grant program cycle, DOE plans to award these 2 percent grants for State administrative costs at the time the State Plan is approved.

Subsequent to this initial application for administrative costs, States may forward a second application to DOE during each grant program cycle at the time the State forwards all the grant applications eligible for technical assistance programs and energy conservation measures. At that time, States may apply for an administrative expense grant up to an amount equal to the difference between the initial amount awarded for an administrative expense grant for that grant program cycle and 5 percent of the total of all

grants recommended for institutions in that State in the same grant program cycle. All grants for State administrative expenses are subject to the 50 percent matching requirements. The total of all amounts requested to defray State administrative expenses plus the total of all amounts recommended to fund technical assistance programs and energy conservation measures must be less than or equal to the total amount allocated for the State.

The limitations on State administrative expenses set forth in § 455.83 were also revised pursuant to comments received. States' expenses may now include the acquisition of services, such as computer, printing or other services, directly supporting the State's administration of the grant program. In addition, the cost limit on any single item of equipment acquired was raised from $200 to $300. Items costing in excess of $300 may only be purchased with the express consent of the Secretary.

Allocation Formula

The formula established for allocating funds among the States for schools and hospitals and for units of local government and public care institutions is designed to reflect the relative need for financial assistance of each State. The population and climate of each State is considered to be the best indicator of need, because these two factors tend to reflect the number of buildings eligible for assistance and the level of energy use within such buildings, respectively. Total energy use of the eligible institutions within any State is expected to be approximately in direct proportion to the product of these factors. Bureau of Census estimates were used as the basis for all population data. Population-weighted State averages for heating and cooling degree days, as determined by the National Oceanic and Atmospheric Administration, were used to indicate climate. Although heating and cooling degree days do not precisely reflect the different energy requirements of buildings, they are the only indicators of climate currently available on a population-weighted basis for all States. DOE is examining possible alternatives to the use of heating and cooling degree days in response to comments concerning the formula. These alternatives will not be available for use in computing State allocations during the first grant program cycle. If an alternative measure of climate is developed which more precisely reflects actual energy use and the potential for energy conservation, the allocation formula established by these rules will be appropriately amended at that time.

Fuel cost is used in the allocation formula to reflect the special needs of those regions where the price of energy is somewhat higher than the national average. And, finally, a portion of the available funds is allocated equally among all States in order to reflect the minimum requirements necessary to participate in the program and to assure that no State (except the District of Columbia and the eligible territories) receive less than 0.5 percent of the total amounts appropriated, as required by section 398 of EPCA.

A number of comments stated that the formula for allocating funds among States was incorrect and that the allocation factors given in Table 4 of the proposed regulation could not be derived with the data and formula given. The regulations have been changed to clarify the factors in the allocation formula. The denominator of the fuel cost factor is the summation of the fuel cost numerators of all States. The denominator of the population-climate factor is the summation of the population-climate numerators of all States. In addition, there were several errors in the climate data given in Table 3 of the proposed regulation. The correct data for fuel cost, population and climate are set forth below in Tables 1, 2 and 3, respectively. New allocation factors appear in Table 4, and the allocation of funds among States for local government and public care buildings and for schools and hospitals for the first grant program cycle are given in Table 5.

Table 1.—*Oil Import Price: 15.32*

[Demand Region Average Retail Price Summary in 1978 $/Million Btu's]

Sector (fuel)	Demand regions										
	Nw.-Eng.	N.Y./N.J.	Mid-Atl.	S.-Atl.	Midwest	S.-West	Central	N.-Cntrl.	West	N.-West	Total
Residential	5.11	5.86	6.14	7.87	4.56	5.20	4.41	4.10	5.59	4.82	5.39
(Elect.)	13.31	15.91	13.89	11.05	12.00	11.87	12.70	9.65	12.66	5.83	11.71
(Dist.)	3.89	3.97	4.16	4.23	3.79	3.90	3.69	3.87	3.85	3.85	3.93
(LG)	3.90	4.01	4.32	4.32	3.99	3.93	3.91	4.07	3.94	3.94	4.04
(Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.76	1.82
(NG)	4.53	4.13	3.58	3.15	3.11	2.39	2.11	2.26	3.35	3.65	3.09
Commercial	4.78	6.45	6.45	6.65	5.15	6.02	6.05	5.26	6.85	4.22	5.85
(Elect.)	13.22	17.69	13.31	11.18	11.98	11.26	12.43	8.80	11.71	5.81	12.01
(Dist.)	3.64	3.71	3.76	3.76	3.60	3.64	3.51	3.64	3.56	3.56	3.66
(Resid.)	2.87	2.96	3.27	2.90	3.12	2.97	3.10	3.01	2.92	2.85	2.99
(LG)	3.27	3.27	3.27	3.27	3.49	3.27	3.46	3.47	3.27	3.27	3.38
((Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.76	1.82
(Asphalt)	3.18	3.18	3.18	3.17	3.20	3.13	3.15	3.19	3.07	3.07	3.15
(NG)	3.86	3.53	3.11	2.63	2.78	2.46	3.46	3.13	2.83	3.05	2.94
Raw material [1]	3.43	3.35	3.18	2.92	3.25	3.27	3.28	3.20	3.08	2.92	3.22
(LG)	3.61	3.61	3.61	3.58	3.59	3.54	3.52	3.56	3.44	3.44	3.54
(Oil)	3.18	3.18	3.18	3.17	3.20	3.13	3.15	3.19	3.07	3.07	3.15
(NG)	3.29	2.83	2.69	2.19	2.44	2.16	3.10	2.65	2.44	2.37	2.33
Industrial [3]	4.86	4.54	3.92	4.98	3.88	2.98	4.79	3.16	3.85	3.28	3.79
(Elect.)	10.97	9.47	10.97	9.40	9.37	9.57	10.55	7.30	9.96	3.86	9.29
(Dist.)	3.64	3.69	3.86	3.85	3.60	3.63	3.50	3.68	3.56	3.56	3.67
(Resid.)	2.92	3.06	3.19	2.87	3.10	2.96	3.07	2.96	2.92	2.97	2.99
(LG)	3.66	3.74	3.95	3.96	3.82	3.70	3.76	3.65	3.69	3.69	3.79
(Coal)	2.07	1.95	1.84	1.97	1.75	1.63	1.68	1.37	1.75	1.76	1.76
(Met Coal [2])	2.18	2.08	1.97	2.10	2.02	2.12	1.95	2.21	2.59	2.70	2.03
(Naphtha)	3.61	3.61	3.61	3.58	3.59	3.54	3.52	3.56	3.44	3.44	3.56
(NG)	3.29	2.83	2.69	2.24	2.44	2.16	3.10	2.65	2.44	2.37	2.31
Transportation	5.74	5.79	5.67	5.63	5.67	5.22	5.52	5.49	5.38	5.42	5.55
(Elect.)	12.44	14.25	12.35	10.33	10.61	10.64	11.74	8.59	11.37	4.96	13.22
(Dist.)	4.79	4.84	5.00	4.99	4.75	4.77	4.65	4.82	4.71	4.71	4.82
(Resid.)	2.92	3.06	3.19	2.87	3.10	2.96	3.07	2.96	2.92	2.97	2.99
(LG)	3.27	3.27	3.27	3.27	3.49	3.27	3.46	3.47	3.27	3.27	3.31
(Gasoline)	6.05	6.27	6.03	5.94	5.96	5.73	5.83	5.87	6.01	6.02	5.96
(Jet Fuel)	4.12	4.23	4.49	4.54	4.05	4.16	3.93	4.16	4.10	4.10	4.22
Average price	5.16	5.62	5.08	5.76	4.67	3.83	5.01	4.40	5.11	4.42	4.82

[1] Liquid gas in the raw material sector includes liquid gas feedstock.
[2] Met Coal includes 70% premium coal and 30% bituminous low sulfur coal.
[3] Industrial sector here does not include refineries.

Source: Energy Information Administration. Prepared for the Administrator's Annual Report, 1977 (1985 Series C projections).

Table 2

State	Population (in thousands)
Alabama	3,665
Alaska	382
Arizona	2,270
Arkansas	2,109
California	21,520
Colorado	2,583
Connecticut	3,117
Delaware	582
Dist. of Columbia	702
Florida	8,421
Georgia	4,970
Hawaii	887
Idaho	831
Illinois	11,229
Indiana	5,302
Iowa	2,870
Kansas	2,310
Kentucky	3,428
Louisiana	3,841
Maine	1,070
Maryland	4,144
Massachusetts	5,809
Michigan	9,104
Minnesota	3,965
Mississippi	2,354
Missouri	4,778
Montana	753
Nebraska	1,553
Nevada	610
New Hampshire	822
New Jersey	7,336
New Mexico	1,168
New York	18,084
North Carolina	5,469
North Dakota	643
Ohio	10,690
Oklahoma	2,766
Oregon	2,329
Pennsylvania	11,862
Rhode Island	927
South Carolina	2,848
South Dakota	686
Tennessee	4,214
Texas	12,487
Utah	1,228
Vermont	476
Virginia	5,032
Washington	3,612
West Virginia	1,821
Wisconsin	4,609
Wyoming	390
American Samoa	28
Guam	100
Puerto Rico	2,951
Virgin Islands	83
U.S. total	217,820

Table 3

State	Heating degree days	Cooling degree days
Alabama	2,695	1,999
Alaska	12,012	8
Arizona	2,298	2,624
Arkansas	3,214	1,892
California	2,728	669
Colorado	7,004	336
Connecticut	6,130	507
Delaware	4,780	1,021
Dist. of Columbia	4,750	1,415
Florida	704	3,388
Georgia	2,684	1,859
Hawaii	0	3,528
Idaho	6,917	415
Illinois	6,058	950
Indiana	5,713	952
Iowa	6,834	876
Kansas	4,900	1,543
Kentucky	4,414	1,254
Louisiana	1,701	2,636
Maine	8,002	222
Maryland	4,782	1,015
Massachusetts	6,232	487
Michigan	6,739	593
Minnesota	8,729	473
Mississippi	2,411	2,223
Missouri	5,024	1,332
Montana	8,292	239
Nebraska	6,347	1,099
Nevada	4,370	1,500
New Hampshire	7,535	297
New Jersey	5,470	877
New Mexico	4,786	972
New York	5,899	677
North Carolina	3,392	1,454
North Dakota	9,484	421
Ohio	5,779	797
Oklahoma	3,508	2,003
Oregon	5,254	193
Pennsylvania	5,755	723
Rhode Island	5,924	445
South Carolina	2,697	1,885
South Dakota	7,681	801
Tennessee	3,801	1,458
Texas	2,015	2,669
Utah	6,580	630
Vermont	7,873	293
Virginia	4,286	1,113
Washington	5,752	171
West Virginia	5,108	849
Wisconsin	7,531	541
Wyoming	7,895	326
American Samoa	0	5,325
Guam	0	5,011
Puerto Rico	0	4,907
Virgin Islands	0	5,427
U.S. Total	270,449	77,280

Table 4

State	0.07/n + 0.1(Sfc)/Nfc + 0.83(SP)(SC)/(NPC) = Allocation Factor			
Alabama	.0013	.0021	.0112	.0146
Alaska	.0013	.0016	.0030	.0059
Arizona	.0013	.0019	.0073	.0104
Arkansas	.0013	.0014	.0070	.0097
California	.0013	.0019	.0476	.0507
Colorado	.0013	.0016	.0123	.0152
Connecticut	.0013	.0019	.0135	.0166
Delaware	.0013	.0019	.0022	.0053
Dist. of Columbia	.0013	.0019	.0028	.0060
Florida	.0013	.0021	.0223	.0257
Georgia	.0013	.0021	.0147	.0181
Hawaii	.0013	.0019	.0020	.0052
Idaho	.0013	.0016	.0040	.0069
Illinois	.0013	.0017	.0512	.0542
Indiana	.0013	.0017	.0230	.0260
Iowa	.0013	.0018	.0144	.0175
Kansas	.0013	.0018	.0097	.0128
Kentucky	.0013	.0021	.0126	.0160
Louisiana	.0013	.0014	.0108	.0135
Maine	.0013	.0019	.0057	.0089
Maryland	.0013	.0019	.0156	.0188
Massachusetts	.0013	.0019	.0253	.0285
Michigan	.0013	.0017	.0434	.0464
Minnesota	.0013	.0017	.0237	.0267
Mississippi	.0013	.0021	.0071	.0105
Missouri	.0013	.0018	.0198	.0229
Montana	.0013	.0016	.0042	.0071
Nebraska	.0013	.0018	.0075	.0106
Nevada	.0013	.0019	.0023	.0055
New Hampshire	.0013	.0019	.0042	.0074
New Jersey	.0013	.0021	.0303	.0336
New Mexico	.0013	.0014	.0044	.0070
New York	.0013	.0021	.0774	.0807
North Carolina	.0013	.0021	.0172	.0206
North Dakota	.0013	.0016	.0041	.0070
Ohio	.0013	.0017	.0457	.0487
Oklahoma	.0013	.0014	.0099	.0126
Oregon	.0013	.0016	.0083	.0112
Pennsylvania	.0013	.0019	.0500	.0531
Rhode Island	.0013	.0019	.0038	.0070
South Carolina	.0013	.0021	.0085	.0119
South Dakota	.0013	.0016	.0038	.0067
Tennessee	.0013	.0021	.0144	.0178
Texas	.0013	.0014	.0381	.0407
Utah	.0013	.0016	.0058	.0087
Vermont	.0013	.0019	.0025	.0057
Virginia	.0013	.0019	.0177	.0208
Washington	.0013	.0016	.0139	.0168
West Virginia	.0013	.0019	.0071	.0102
Wisconsin	.0013	.0017	.0242	.0272
Wyoming	.0013	.0016	.0021	.0050
American Samoa	.0013	.0019	.0001	.0032
Guam	.0013	.0019	.0003	.0035
Puerto Rico	.0013	.0021	.0094	.0128
Virgin Islands	.0013	.0021	.0003	.0036
U.S. Total	.0700	.1000	.8300	1.0000

Table 5

State	Allocation Factor	Schools & [1] Hospitals	Units of Local [1] Government & Public Care Institutions
Alabama	.0146	$2,625,625	$255,269
Alaska	.0059	1,059,528	103,010
Arizona	.0104	1,876,158	182,404
Arkansas	.0097	1,744,065	169,562
California	.0507	9,130,947	887,731
Colorado	.0152	2,741,280	266,513
Connecticut	.0166	2,994,044	291,088
Delaware	.0053	960,830	93,414
Dist. of Columbia	.0060	1,072,309	104,252
Florida	.0257	4,627,242	449,871
Georgia	.0181	3,255,298	316,487
Hawaii	.0052	933,898	90,796
Idaho	.0069	1,235,391	120,107
Illinois	.0542	9,756,588	948,557
Indiana	.0260	4,677,807	454,787
Iowa	.0175	3,152,824	306,525
Kansas	.0128	2,304,189	224,018
Kentucky	.0160	2,886,435	280,626
Louisiana	.0135	2,434,027	236,642
Maine	.0089	1,601,455	155,697
Maryland	.0188	3,379,453	328,558
Massachusetts	.0285	5,129,224	498,675
Michigan	.0464	8,357,619	812,546
Minnesota	.0267	4,812,300	467,863
Mississippi	.0105	1,888,195	183,575
Missouri	.0229	4,118,238	400,384
Montana	.0071	1,272,836	123,748
Nebraska	.0106	1,915,307	186,210
Nevada	.0055	986,773	95,936
New Hampshire	.0074	1,324,786	128,799
New Jersey	.0336	6,055,483	588,728
New Mexico	.0070	1,267,691	123,248
New York	.0807	14,531,860	1,412,820
North Carolina	.0206	3,714,978	361,178
North Dakota	.0070	1,266,401	123,122
Ohio	.0487	8,773,118	852,942
Oklahoma	.0126	2,268,269	220,526
Oregon	.0112	2,007,741	195,197
Pennsylvania	.0531	9,566,916	930,117
Rhode Island	.0070	1,262,250	122,719
South Carolina	.0119	2,139,013	207,960
South Dakota	.0067	1,201,941	116,855
Tennessee	.0178	3,206,416	311,735
Texas	.0407	7,334,243	713,051
Utah	.0087	1,557,500	151,424
Vermont	.0057	1,025,966	99,747
Virginia	.0208	3,747,870	364,376
Washington	.0168	3,027,809	294,370
West Virginia	.0102	1,836,072	178,507
Wisconsin	.0272	4,896,400	476,039
Wyoming	.0050	895,907	87,102
American Samoa	.0032	564,782	56,854
Guam	.0035	626,017	60,863
Puerto Rico	.0128	2,297,382	223,357
Virgin Islands	.0036	653,839	63,568
U.S. Total	1.0000	180,000,100	17,499,950

[1] Allocations are subject to availability of funds.

Several comments expressed doubt as to whether the formula set forth in § 455.101, allocating appropriations among the States, conformed to the requirements of sections 398 and 400H of EPCA. The formula fully complies with the requirements of the law. Pursuant to section 400H of EPCA, the Secretary must allocate grants for units of local government and public care institutions among the States based upon the population and climate of each State and such other factors as the Secretary deems appropriate. The Secretary must also assure that the funds appropriated for grants to schools and hospitals are allocated among the States on the basis of a formula to be prescribed by rule in accordance with the provisions of section 398 of EPCA. Since population and climate factors are to be the principal basis for allocating funds for schools and hospitals, as well as for units of local government and public care institutions, DOE has determined that it is equitable and appropriate to use the same formula for allocating among the States all funds appropriated under Title III for technical assistance programs and energy conservation measures. In conformity with the requirements of section 398 of EPCA, 10 percent of the amounts available will be allocated taking into account energy costs. Another 80 percent of the amounts available will be allocated taking into account the population and climate of each State. DOE has decided to allocate the remaining 10 percent of the available funds so that 7 percent will be divided equally among all States and the remaining 3 percent will be allocated on the basis of population and climate, bringing the total percentage allocated on the basis of population and climate to the 83 percent figure set forth in § 455.101. This formula is used to assure that no eligible State receives less than 0.5 percent of the funds allocated among the States.

The additional requirement to allocate 10 percent of the total available for schools and hospitals determined to be in a class of severe hardship (for additional financial assistance in excess of the 50 percent Federal share, up to 90 percent of the costs of technical assistance programs and energy conservation measures) is satisfied by the requirement that each State reserve 10 percent of its allocation for schools and hospitals each year to provide this additional financial assistance.

State and Grantee Reporting Requirements

Sections 455.63 and 455.73 have been revised in the final regulation to include the requirement that States and grantees which have received financial assistance for energy conservation measures submit regular reports on energy use. These reports are intended to indicate the energy use reductions

that have been realized as a result of energy conservation maintenance and operating procedures and energy conservation measures. This requirement was added to insure that the States and DOE have available accurate information on the actual energy savings resulting from these programs. Further, these reports will encourage participating institutions to establish sound, ongoing energy management practices. An essential ingredient of any effective energy management program is the monitoring of actual energy use levels. These practices are expected to provide significant long-term benefits to institutions in maintaining efficient operations. Grantees will submit reports annually to the States. The States will summarize the reports submitted by the grantees and report the results to DOE in an annual report. Data and information contained in the reports prepared by the grantees will be collected and maintained on a monthly basis or for a period consistent with the billing cycle associated with the relevant fuel type. This reporting requirement will apply for three years or for the life of these programs, whichever is shorter.

Comments DOE Could Not Incorporate

DOE received many comments in response to the notice of proposed rulemaking which suggested revisions to the regulation which the Department was unable to incorporate in the final regulation. These comments included suggestions to: eliminate the matching funds requirement; fund energy conservation measures for units of local government and public care institutions; permit the funding of administrative buildings owned by local education agencies; alter or eliminate the requirement for conformity with the provisions of the Davis-Bacon Act; fund technical assistance programs and energy conservation measures commenced prior to November 9, 1978; eliminate the requirement that funds not obligated be reallocated in the next grant program cycle; and permit units of local government and public care institutions to qualify for hardship funding. Each of these comments proposes a revision to a specific requirement of NECPA. Thus, DOE could not and did not incorporate these comments in this regulation.

V. Additional Information

Environmental Assessment

DOE prepared an environmental assessment of the entire Title III NECPA programs. Notice of the public availability of that environmental assessment, together with the negative determination of environmental impact reached pursuant to an evaluation of the environmental assessment, was published in the **Federal Register** on March 12, 1979 (44 FR 13554). The negative determination concluded that the programs established by Title III of NECPA did not constitute major Federal actions significantly affecting the quality of the human environment pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). No material comments were received during the public comment period. Consequently, DOE has finalized, and will act in accordance with, that negative determination.

Regulatory Analysis and Effective Date

The proposed regulation was reviewed in accordance with Executive Order 12044, 43 FR 12661, and was determined to be a "significant regulation" likely to have a "major impact." The proposed regulation was also reviewed in accordance with OMB Circular A-116 and was determined to be a major policy and program initiative.

In consideration of the rapid depletion of the Nation's nonrenewable energy resources and the short-term statutory deadline for issuance of regulations implementing NECPA Title III programs, the Under Secretary of DOE has determined that it is contrary to the public interest to delay issuance of this regulation for preparation of a regulatory analysis and an urban and community impact analysis. However, DOE is in the process of preparing such analyses which will be made available for public review and comment within 90 days of the publication of this regulation. Based on the findings of these analyses and any comments received following public review, DOE may propose appropriate amendments to this regulation.

Also, for the reasons just noted, good cause exists to make this regulation effective upon publication, rather than 30 days thereafter as would otherwise be required under the Administrative Procedure Act. In consideration of the foregoing, Part 455 of Chapter II, Title 10 of the Code of Federal Regulations is amended by adding new Subparts C through I, as set forth below. This amendment shall be effective April 17, 1979.

Issued in Washington, D.C., April 6, 1979.

Omi G. Walden,

Assistant Secretary, Conservation and Solar Applications, Department of Energy.

10 CFR Part 455 is amended by establishing new Subparts C, D, E, F, G, H and I as follows:

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

Sec.

455.40 Purpose and scope.
455.41 Eligibility.
455.42 Contents of program.

Subpart D—Energy Conservation Measures for Schools and Hospitals

455.50 Purpose and scope.
455.51 Eligibility.
455.52 Contents of program.

Subpart E—Applicant Responsibilities

455.60 Grant application submittals.
455.61 Applicant certifications.
455.62 Grant applications for State administrative expenses.
455.63 Grantee records and reports.

Subpart F—State Responsibilities

455.70 State evaluation of grant applications.
455.71 State ranking of grant applications.
455.72 Forwarding of applications.
455.73 State duties.

Subpart G—Grant Awards

455.80 Approval of grant applications.
455.81 Grant awards for units of local government and public care institutions.
455.82 Grant awards for schools and hospitals.
455.83 Grant awards for State administrative expenses.

Subpart H—State Plan Development and Approval

455.90 Contents of State plan.
455.91 Submission and approval of State plans.
455.92 State plans developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

455.100 Allocation of funds.
455.101 Allocation formulas.
455.102 Reallocation of funds.

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 et seq., which establishes Parts G and H of Title III of the Energy Policy and Conservation Act, Pub. L. 94-163, 42 U.S.C. 6321 et seq.; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, Pub. L. 94-385, 42 U.S.C. 3801 et seq.; Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 et seq.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

§ 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

§ 455.41 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must—

(a) Be a school, hospital, unit of local government or public care institution, all as defined in § 455.2, or a coordinating agency representing a group of eligible institutions and which has been granted authority by the institutions to act in their behalf;

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified as a result of the energy audit, or provide a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified; and,

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.42 Contents of program.

(a) A technical assistance program shall be conducted by a qualified technical assistance analyst, who shall consider all possible energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

(b) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a final report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the preliminary energy audit and energy audit (or its equivalent) of the building;

(ii) The operating characteristics of energy using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft./yr), at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for solar conversion, particularly for water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar systems;

(5) A description and analysis of all recommendations, if any, for acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth—

(i) A description of each recommended energy conservation measure;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure;

(iii) An estimate of the useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each energy conservation measure, if any;

(v) An estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any;

(vi) An estimate of the annual energy and energy cost savings (using current energy prices) expected from the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures; and,

(C) Calculate that portion of the total energy and energy cost savings, as determined in (B) above, attributable to each individual energy conservation measure.

(vii) The simple payback period of each recommended energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as determined pursuant to § 455.42(b)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(b)(5)(vi). For the purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices. The estimated cost of the measure shall be the total cost for design and other professional services (excluding costs of a technical assistance program), if any, and acquisition and installation costs. Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but not required, for use by the institution in its decision-making process;

(6) A listing of energy use and cost data for each fuel type used for the prior 12-month period.

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and the grant application and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

This subpart specifies what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy

conservation measures, including solar and other renewable resource measures.

§ 455.51 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measure, an applicant must—

(1) Be a school or hospital, or both as defined in § 455.2, or a coordinating agency which represents groups of eligible institutions and which has been granted authority by the institutions to act in their behalf;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of an energy audit and a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified;

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 1 year nor greater than 15 years, and the estimated useful life of the measure shall be greater than its simple payback period.

§ 455.52 Contents of program.

The programs to be funded under this part will be for the design, acquisition and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to—

(a) Insulation, which resists heat transfer from the mechanical systems to the surrounding space, for bare pipes, water heaters, hot water storage tanks, chilled water piping, ductwork and other uninsulated mechanical equipment carrying an above or below ambient temperature fluid;

(b) Roof insulation, which resists heat transfer through the roof;

(c) Ceiling insulation, installed either above or below the ceiling, which resists heat transfer through the ceiling;

(d) Wall insulation, which resists heat transfer through the wall;

(e) Floor insulation, which resists heat transfer through the floor;

(f) Storm windows, which are an additional window, normally installed to the exterior, but which may be installed to the interior of the primary or ordinary window, to increase resistance to heat transfer, and to decrease air infiltration through the window assembly;

(g) Storm doors, which are an extra door installed to the exterior of an exterior door, but also may be installed as part of the entrance vestibule, to decrease heat transfer and air infiltration through the building entrance ways;

(h) Multiglazed window or door systems, which are a single glass unit consisting of multiple layers of glass separated by a hermetically sealed air space, which provide greater resistance to heat transfer;

(i) Reduction in glass area (in other than south-facing glazing systems) through use of methods such as bricking and insulated paneling which decreases heat transfer and air infiltration;

(j) Heat absorbing or heat reflective glazed and coated window and door systems, which are specially treated, coated or laminated glazing systems to absorb or reflect solar heat;

(k) Caulking, which is placed in joints of buildings or window or door systems to prevent the passage of air and moisture through the building envelope;

(l) Weatherstripping, which consists of strips of flexible material placed over, under, or in movable joints of windows and doors to reduce the passage of air and moisture;

(m) Automatic energy control systems, such as mixed air temperature reset devices; cooling coil discharge temperature reset devices; hot deck temperature reset devices; economizer controls; enthalpy controls; night setback thermostats; time clocks to start/stop selected heating, ventilating and air conditioning systems, refrigeration equipment, hot water generators, and associated pumps and fans; thermostatic radiator valves, and central computer control systems, which adjust the supply of heating, cooling, and ventilation to meet space conditioning requirements;

(n) Equipment required to operate or convert to variable energy supply, including—

(1) Automatic ventilating systems to turnoff or vary the consumption of energy systems to deliver no more energy than required at any operating point;

(2) Constant volume air distribution systems altered to variable air flow systems by the addition of variable air flow boxes, fan volume control dampers and related climatic controls; or

(3) Water spray coils for adiabatic cooling during appropriate weather conditions;

(o) Passive solar systems, such as direct gain glazing systems, mass (trombe) wall systems, thermal pond systems, and thermosyphon systems, which utilize elements of the building to collect, store and distribute solar energy for heating and/or cooling, and in which heat flow is by natural means (conduction, convection, radiation or evaporation);

(p) Solar space heating or cooling systems, which consist of solar collectors, and associated thermal storage, heat exchangers, pumps, fans, controls, piping and ducting;

(q) solar electric generating systems, which consist of photovoltaic solar collectors and associated electric storage and controls, or concentrating solar collectors and generating equipment, or wind energy conversion systems;

(r) Solar domestic hot water heating systems, which consist of solar collectors, and associated thermal storage, heat exchangers, pumps, controls and piping, for systems such as domestic hot water, laundry, kitchen, and boiler water makeup;

(s) Furnace or utility plant modifications, which consist of the installation of equipment to achieve reduction in fuel consumption, or to convert to renewable energy sources or coal, including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which are designed to substantially reduce the amount of fuel consumed as a result of increased combustion efficiency;

(2) Electrical or mechanical furnace ignition systems which eliminate continuous energy use;

(3) Devices for modifying flue openings, such as dampers and heat exchangers, which increase the efficiency of the total heating systems;

(4) Automatic combustion control systems, which improve burner operating performance to reduce consumption of fuel during full- and part-load operation;

(5) Devices, such as turbulators and flow restrictors, for modifying the capacity of boilers or hot water units to reduce oversized equipment to a proper size (after the other building modifications) and to increase the full and part-load efficiency of the primary equipment; and

(6) Equipment required to convert oil-fired and gas-fired units to alternative energy sources, including coal;

(t) Lighting fixture modifications and associated rewiring, which reduce the watts per square foot required for illumination through use of such measures as lamp sources of higher efficiency, or use of non-uniform task lighting design. Lighting fixture modifications that increase the general illumination level of a facility shall not be eligible for funding unless the increase is necessary to conform to any applicable State or local building code;

(u) Energy recovery systems which reduce energy used in heating and cooling systems by—

(1) Direct recycling of uncontaminated air, which has been conditioned, to an adjacent area for heating, cooling or ventilation makeup air;

(2) Exhaust air heat recovery to preheat outside air supply with heat recovery devices such as rotary air wheels, plate heat exchangers, non-regenerative heat-pipe devices, and run-around loop systems; or

(3) Purifying with charcoal or other mediums and recycling exhaust air from toilet areas, dining rooms, and lounges, and other building areas;

(v) Cogeneration systems which produce steam, heat, or other forms of energy as well as electricity for use primarily within a building or complex of buildings and which meet such fuel efficiency requirements as may be prescribed or approved by DOE and which may be new heat recovery equipment added to existing electrical generation systems;

(w) Any otherwise eligible energy conservation measure that involves leased equipment, which will save a substantial amount of energy. Only the costs of installation and connection of such leased equipment are eligible for financial assistance under this program. For purposes of ranking, pursuant to § 455.71(b)(1), a building for which a leased measure has been proposed, the simple payback period shall be determined by dividing the total installation and connection costs by the result of subtracting the average annual recurring lease costs from the projected average annual energy cost saving;

(x) Any other measures an energy audit or a technical assistance report shows, to the satisfaction of the Secretary, will save a substantial amount of energy. Such measures must be specifically identified in the grant application, and a complete description of the measure, together with calculations and other technical data supporting the projected cost and energy savings must be included in the application.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

(a) Each eligible applicant desiring to receive financed assistance shall file an applicant in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include—

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under § 455.41;

(3) The results of the preliminary energy audit and energy audit (or its equivalent) for each building for which financial assistance is requested;

(4) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part;

(5) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(6) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship.

(c) Applications from schools or hospitals and coordinating agencies for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include—

(1) The applicant's name and mailing address;

(2) A written statement certifying that the applicant is eligible under § 455.51;

(3) Identification of each building pursuant to 10 CFR 450.42(a) (1) through (5) for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(4) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part;

(5) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(6) A list, by building, of the specific energy conservation measures proposed for funding, indicating the cost of each measure, the estimated energy and energy cost savings of each measure, the projected simple payback period for each measure, computed in accordance with the methodology described in § 455.42(b)(5)(vii) or § 455.52(w), as the case may be, and the average simple payback period for all measures proposed for the building. The average simple payback period of all measures proposed shall be determined by dividing the total estimated cost by the total projected annual cost saving (from energy savings only);

(7) A technical assistance report, completed since the most recent

construction, reconfiguration or utilization change to the building which significantly modified energy use, for each building;

(8) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(9) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship.

(d) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program.

(e) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

§ 455.61 Applicant Certifications.

Applications for financial assistance for technical assistance programs and energy conservation measures, including solar and other renewable resource measures, shall include a signed statement that the applicant—

(a) Has satisfied the requirements set forth in § 455.60;

(b) Will expend granted funds for the purpose stated in the application and in compliance with the requirements of this part and the applicable approved State Plan;

(c) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit and, for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualifed to perform the duties of a technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) Will not enter into any contract relating to an energy conservation measure, which requires or may require expenditure of more than $5,000 (excluding technical assistance costs), that does not conform to the provisions of the Davis-Bacon Act (40 U.S.C. section 276a to 276a–5) pertaining to minimum wages for construction in the applicant's locality; and

(f) Will comply with all reporting requirements contained in § 455.63.

§ 455.62 Grant Applications For State Administrative Expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file applications therefor in accordance with the provisions of this section. Each State may apply for an amount not exceeding 2 percent of its total allocation for technical assistance and energy conservation measures during the initial grant program cycle to the Secretary at any time after the State forwards its State Plan to the Secretary for approval; or, for subsequent grant program cycles, any time after notice by DOE of the amounts allocated to each State for that grant program cycle. In addition, each State after it makes the submittal to DOE required under § 455.72 may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part; and

(2) An itemized budget, which stipulates the intended use of all Federal and non-Federal funds, for only those State administrative expenses listed in § 455.83(b), and which identifies the sources and amounts of the required matching non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A–102, "Uniform Requirements for Grants-in-aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part.

§ 455.63 Grantee Records and Reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including solar and other renewable resource measure, or State administrative expenses shall keep all the records required by § 455.4.

(b) By the end of January and July of each year each grantee shall, until the grantee's program has been concluded, submit a report to the State which shall detail and discuss—

(1) Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned; and

(2) Financial status reports completed in accordance with the documents listed in § 455.3. Financial status reports must be submitted simultaneously to both the State and the Secretary.

(c) Within 90 days of concluding a technical assistance program or installation of funded energy conservation measures, including solar and other renewable resource measures, the grantee shall submit a final report to the State and a summary thereof to the Secretary which shall detail and discuss, as applicable—

(1) A summary of all work accomplished;

(2) Problems encountered;

(3) Final financial reports completed in accordance with the documents listed in § 455.3;

(4) For a completed technical assistance program—

(i) The technical assistance report; and

(ii) A recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resource measures;

(5) For completed energy conservation measures including solar and other renewable resource measures—

(i) A listing and description of energy conservation measures acquired and installed;

(ii) A final projected simple payback period, computed in accordance with § 455.42, for each building specifying and utilizing the actual costs for each measure and all the measures, taken as a whole; and

(iii) A statement that the completed modifications (material, equipment and installation) conform to the report on the technical assistance program and the approved grant application.

(d) Grantees shall keep all records required by this section for a minimum of three years after completion of the technical assistance program or energy conservation measure for which the grant was awarded.

(e) Grantees shall submit annual reports to the State covering each year of the three-year period following installation of an energy conservation measure or measures, or for the life of the program, whichever is shorter. Such annual reports shall identify each building and shall provide data on the actual energy use of that building for the preceeding 12-month period. Energy use shall be presented on a monthly or quarterly, as well as an annual basis, consistent with the energy billing cycle for the building. Annual reports shall be submitted within 60 days of the close of each 12-month period.

Subpart F—State Responsibilities

§ 455.70 State Evaluation of Grant Applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward each application for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m–3 and 300o–2, respectively), and that each has been coordinated through the review mechanisms under section 1523 of the Public Health Service Act (42 U.S.C. 300m–2) and section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

§ 455.71 State Ranking of Grant Applications.

All eligible applications received by the State will be ranked by the State on an individual building-by-building basis.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit (or its equivalent) in accordance with the procedures established in the State Plan and one or more of the methods indicated in 10 CFR 450.43(c). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit without the use of Federal funds.

(1) Each State shall develop separate rankings for all buildings covered by eligible applications for—

(i) Technical assistance programs for units of local governments and public care institutions, and

(ii) Technical assistance programs for schools and hospitals.

(2) Within each ranking for technical assistance, a State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(b) For energy conservation measures, including solar or other renewable energy resource, buildings shall be ranked in descending priority. Several buildings may be ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. States shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation. Buildings shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) The average simple payback period of all energy conservation measures proposed for the building, determined by dividing the total estimated cost by the total projected annual energy cost savings;

(2) The type(s) of energy source(s) to which conversion is proposed (with weighting adjustments directly proportional to the ratio of the annual energy cost savings of the conversion measure to the total annual energy cost savings of all measures proposed for a given building), including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The type(s) and quantity(s) of energy to be saved (with weighting adjustments directly proportional to the ratio of the annual energy savings of each measure to the total annual energy savings of all measures proposed for a given building), including, in descending priority—

(i) Oil;

(ii) Natural gas; and

(iii) Electricity;

(4) Climate within the State; and

(5) Other factors as determined by the State.

(c) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including solar or other renewable resource measures, a State shall assure that—

(1) Schools receive not more than 70 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive not more than 70 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(d) To the extent provided in § 455.82(c), additional financial assistance will be available for schools and hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This additional financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(1) Funding for this additional financial assistance will be taken from the funds reserved for grants in excess of 50 percent of the total costs of the technical assistance programs and energy conservation measures.

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the

relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to paragraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship, and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(e) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

§ 455.72 Forwarding of Applications.

Each State shall forward to the Secretary once each grant program cycle each listing of buildings covered by eligible applications for schools and hospitals or for units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71.

§ 455.73 State Duties.

(a) Each State shall be responsible for—

(1) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(2) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan;

(3) Notifying each applicant, prior to submittal of applications to the Secretary, how the applicant's building ranked among other similar buildings, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the reason therefore;

(4) Certifying that each institution that has submitted an application to be recommended for funding has given its assurance that it is willing and able to participate on the basis of the amounts recommended for that institution in the State ranking pursuant to § 455.71; and

(5) Direct program oversight, monitoring and financial auditing of the activities for which grants are awarded to its institutions to insure compliance with all legal requirements. States shall immediately notify the Secretary of any non-compliance or indication thereof.

(b) Each State shall submit a report to the Secretary, by the close of each February and August following State Plan approval for the duration of the grant program, providing—

(1) A narrative of the program, including objectives accomplished, problems encountered and recommended solutions;

(2) A detailed report on program related financial expenditures by all grantees and by the State;

(3) A summary of the most recent reports received by the State pursuant to § 455.63; and

(4) Such other information as the Secretary may, from time to time, request.

(c) Each State shall include in the August report required by paragraph (b) of this section, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(e).

Subpart G—Grant Awards

§ 455.80 Approval of Grant Applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent that funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor. An application which has been disapproved may be amended and resubmitted in the same manner as the original application at any time within a grant program cycle.

(c) The Secretary shall award only one grant to an applicant for any single technical assistance program or energy conservation measure for any one building. Financial assistance under this part for any single technical assistance program or energy conservation measure shall not exceed the amount of the initial grant award.

§ 455.81 Grant Awards For Units of Local Government and Public Care Institutions.

(a) The Secretary may make grants to units of local governments, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80.

(b) Total grant awards within any State to units of local government and public care institutions are limited to the funds allocated to each State in accordance with Subpart I of this part.

(c) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or personal property having an acquisition cost in excess of $500.

§ 455.82 Grant Awards For Schools and Hospitals.

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the cost of performing technical assistance programs for buildings covered by an

application approved in accordance with § 455.80. Grant awards for technical assistance programs in any State within any grant program cycle shall not exceed—

(1) 30 percent of the amount allocated to a given State from the 1978 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals;

(2) 15 percent of the amount allocated to a given State from the 1979 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals;

(3) 5 percent of the 1980 fiscal year appropriation for technical assistance programs and energy conservation measures for schools and hospitals.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including solar and other renewable resource measures, for buildings covered by an application approved in accordance with § 455.80.

(c) The Secretary may award 10 percent of the total amount allocated to a State for schools and hospitals for technical assistance programs and energy conservation measures in a given grant program cycle to cover more than 50 percent, but not to exceed 90 percent, of the cost of a technical assistance program or an energy conservation measure. These additional amounts may be awarded to applicants in a class of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended by the State pursuant to § 455.71(d)(3), and in amounts determined pursuant to § 455.71(d)(2).

(d) The Secretary shall not award more than 70 percent of the total amount allocated to a State for technical assistance programs and energy conservation measures in a given grant program cycle to either schools or hospitals in that State.

(e) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other personal property having an acquisition cost in excess of $500.

(f) Applicant expenditures for a technical assistance program commenced after November 8, 1978 for a building may be wholly or partially classified in the discretion of the Secretary as matching non-Federal funds for the purposes of matching grants awarded for energy conservation measures.

§ 455.83 Grant Awards For State Administrative Expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs and energy conservation measures, the Secretary may make grant awards to a State—

(1) Immediately following approval of the State Plan, or for subsequent grant program cycles, immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to subparagraph (1) of this paragraph and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration: *Provided,* That no single item of equipment or other personal property costing more than $300 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of State Plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including solar and other renewable resource measures. The State Plan shall be reviewed and approved by State energy agency. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 450.42 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by 10 CFR 450.42 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b);

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 445.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a class of severe hardship. Such policies and procedures shall be in accordance with § 455.71(d);

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation and continued use of energy conservation maintenance and operating procedures in those buildings for which financial assistance is awarded under this part;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the requirements of 10 CFR Part 450 for the purposes of satisfying the eligibility requirements contained in § 455.41(c);

(m) The procedures for establishment of, and adherence to, milestones for accomplishment of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in compliance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3).

(o) The procedures for State management, financial audit, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(p) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts—

(1) Have experience in energy conservation and be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties; and

(q) The procedures for apportionment of funds among eligible institutions within the State. As a minimum, such policies and procedures shall assure a separate priority ranking pursuant to the provisions of § 455.71 for each building covered by an application approved pursuant to the provisions of § 455.70 for—

(1) Technical assistance programs for units of local government and public care institutions;

(2) Technical assistance programs for schools and hospitals; and

(3) Energy conservation measures, including solar and other renewable resource measures, for schools and hospitals.

§ 455.91 Submission and Approval of State Plans.

(a) Proposed State Plans shall be submitted to the Secretary within 120 days of the effective date of this subpart unless the Secretary, upon request and for good cause shown, grants an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each Plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part, the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval. With the written consent of the Secretary, the State may submit a new or amended Plan at any time.

§ 455.92 State Plans Developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the Plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States.

§ 455.100 Allocation of Funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) By notice published in the **Federal Register**, the Secretary shall notify each State of the total amount allocated for grants within the State for any grant program cycle.

(c) By notice published in the **Federal Register**, the Secretary shall notify each State of the period for which funds allocated for a grant program cycle will be reserved for grants within the State.

(d) Each State shall apportion ten percent of its allocation for schools and hospitals in each grant program cycle to provide additional financial assistance, in excess of the 50 percent Federal share but not to exceed 90 percent, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(d).

§ 455.101 Allocation Formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including solar and other renewable resource

measures, for schools and hospitals shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{n} + 0.1\,\frac{(Sfc)}{(Nfc)} + 0.83\,\frac{(SP)\,(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the average retail cost per million Btu's of energy consumed within the region in which the State is located, as reflected in the 1985, Series C projections prepared for DOE's Energy Information Administration Administrator's Annual Report, 1977;

(2) Nfc is $271.95, the summation of the Sfc numerators for all States;

(3) n is the total number of eligible States;

(4) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports", Series P–25, number 603;

(5) SC is the sum of the State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970;

(6) NPC is 1,277,259,000, the summation of the (SP) (SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.102 Reallocation of Funds

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(d), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant program cycle, if available.

(b) If a State Plan has not been approved by February 7, 1981, or within ninety days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) If a State does not forward a sufficient number of grant applications to award all the funds allocated for the State in any grant program cycle, the Secretary shall reallocate the funds which remain available among all States for the next grant program cycle.

(d) If a State does not forward a sufficient number of grant applications under the severe hardship provisions set forth in § 455.71(d) to award 10 percent of all of the funds allocated to the State for schools and hospitals in that grant program cycle, the Secretary shall reallocate the remaining hardship funds among all States for the next grant program cycle.

[FR Doc. 79–11633 Filed 4–11–79; 9:33 am]

BILLING CODE 6450–01–M

federal register

Tuesday
April 17, 1979

Part III

Environmental Protection Agency

Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 201]

Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The United States Court of Appeals for the District of Columbia Circuit has directed the U.S. Environmental Protection Agency to propose and promulgate final noise emission regulations for facilities and equipment of the nation's interstate rail carriers.

This notice proposes an amendment to the existing railroad noise emission regulation. Standards are being proposed which would limit overall facility and equipment noise emissions. Standards are also being proposed which would limit the noise caused by specific pieces of equipment, or operations of equipment.

The standard to control overall facility and equipment noise is a receiving property limit. Measurements are made on property around railroad yards to determine whether the standard is being met.

The standards for specific pieces of equipment, or operations of equipment, apply to retarders, mechanical refrigeration cars and car coupling. Measurements are made at a specific distance from the equipment, or where the activity takes place, to determine whether the standards are being met.

DATES: All interested persons are invited to submit comments on the proposed regulation up until 4:30 p.m., Friday, June 1, 1979.

ADDRESSES: A docket, No. ONAC 79–01 has been established for this rulemaking and will be open to public inspection and copying during normal business hours at the U.S. Environmental Protection Agency's Public Information Reference Unit, Room 2922, 401 M Street, SW, Washington, D.C. 20460. Written comments to the docket should be forwarded to the following address: Rail Carrier Docket Number ONAC 79–01, Office of Noise Abatement and Control (ANR–490), U.S. Environmental Protection Agency, Washington, D.C. 20460.

Commenters may submit one copy to the docket, although five (5) copies would be appreciated.

FOR FURTHER INFORMATION CONTACT: Dr. William E. Roper, Office of Noise Abatement and Control (ANR–490), U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557–7747.

To receive copies by mail of the proposed regulation, and/or the Background Document contact: Mr. Charles Mooney, EPA Public Information Center (PM–215), Room 2119, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–0717.

SUPPLEMENTARY INFORMATION:

11.0 Background Information

The U.S. Environmental Protection Agency developed a noise emission regulation for railroad locomotives and railcars operated by interstate carriers. The regulation was promulgated on December 31, 1975. The Association of American Railroads challenged the regulation (Association of American Railroads vs Costle, 562 F. 2d 1310, D.C. Cir. 1977) on the basis it did not include standards for all railroad equipment and facilities as required by Section 17 of the Noise Control Act of 1972.

In developing the December 31, 1975 railroad noise emission regulation, we addressed the issue of broadening the scope of the regulation to include facilities and additional equipment. We decided that railroad facility and equipment noise, other than locomotives and railcars, was best controlled by measures which did not require national uniformity of treatment. We wanted to leave State and local authorities freedom to address site specific problems, on a case by case basis, without Federal hindrance. If the Federal government establishes standards for railroad facilities and equipment, States and local authorities cannot adopt or enforce any standard (for facilities and equipment covered by the Federal standard) unless it is identical to the Federal standard. In instances, however, where a local situation demands a more stringent noise regulation, State and local authorities could establish and enforce standards or controls and take other actions, provided there is no conflict with the Federal regulation. However, before a State or local government can implement this right, Federal review of their contemplated action is required. We decided that the health and welfare of the Nation's population being jeopardized by railroad facility and equipment noise, other than locomotives and railcars, was best served by specific controls at the State and local level and not by the Federal government regulations which would have to address railroads on a national and therefore on a more general basis.

As a result of the Association of American Railroads' (AAR) legal action, the U.S. Court of Appeals for the District of Columbia Circuit ruled that we must broaden the scope of the existing regulation to include virtually all [1] railroad facilities and equipment. The regulation being proposed broadens the scope of the December 31, 1975 regulation to comply with this directive. The standards have been developed in terms of typical and average situations, as indeed they must, to arrive at national uniformity of treatment. We were unable to translate the solutions to the many local and site-specific problems to a single Federal solution. The uniform national standards we are proposing go only part of the way in controlling railroad facility and equipment noise throughout the country. This is because of the lack of control technology at costs which are reasonable on an aggregate basis to reduce the noise to acceptable levels. Our health and welfare analysis indicates there are an appreciable number of people in the nation who will still be significantly and adversey impacted by railroad noise once this rule is in effect. Because of the preemptive nature of the Federal law, States and localities may not be able to provide further relief to their citizens in many of these cases.

The current date by which the court has ordered publication of final regulations is February 23, 1979. We will seek an extension of this date to facilitate public comment and to prepare our response to those comments in preparation of the final regulations. The 45 day comment period identified for public comment in this NPRM anticipates the Court's granting an extension. Should the Court's action necessitate a change in this schedule, we will publish a notice in the **Federal Register** announcing such a change.

2.0 The Proposed Regulation

The regulation establishes standards for overall railroad facility and equipment noise, as well as specific standards for retarders, refrigerator cars and car coupling operations. The regulation applies to most railroad facilities and equipment contained within the facilities, including equipment previously regulated by 40 CFR Part 201.

[1] Facilities and equipment *not* covered by this regulation include: Mainline rail operations, bells and whistles, facilities not directly associated with railroad trackage (e.g. an office building in a downtown area) and maintenance-of-way equipment.

Overall Facility and Equipment Noise

It is proposed that, effective on the dates listed, noise levels on property on or beyond a railroad yard boundary line shall not exceed the levels of Table 2.1 (a), (b), (c), and (d). Noise levels are to be measured as prescribed in Subpart D.

Measurements are made only on developed adjoining or nearby property, so that costs of noise abatement are not imposed on railroads in locations where the noise does not intrude on people. Receiving property is defined in 201.1(kk) as any property that receives the sound from railroad facility operations, but that is not undeveloped or owned or controlled by a railroad; except that occupied residences located on property owned or controlled by the railroad are included in the definition of "receiving property." Railroad crew sleeping quarters located on property owned or controlled by the railroad are not considered in this rulemaking since these quarters are the subject of regulation by the FRA of DOT.

Through trains (as defined in 201(ss)) are also not subject to the receiving property standards below, since they are already regulated under the noise control standards earlier promulgated by EPA. Through train operation on mainline roadbed from a noise emission standpoint is essentially the same whether the roadbed is located within a rail yard facility or elsewhere. At this time no additional noise control is considered necessary for through trains.

Table 2.1(a).—*Proposed Receiving Property Standards—24-Hour Period*

Effective date	Standard, (L_{dn})	Facility
Jan. 1, 1982	70 dB	All Facilities & Equipment.
Jan. 1, 1985	65 dB	Hump Yard Facilities & Equipment.

Table 2.1(b).—*Proposed Receiving Property Standards—1-Hour Period*

Effective date	Standard, ($L_{eq(1)}$)		Facility
	Daytime	Nighttime	
Jan. 1, 1982.	84 dB	74 db	All Facilities & Equipment.
Jan. 1, 1985.	79 dB	69 dB	Hump Yard Facilities & Equipment.

The letters L_{dn} stand for Day-Night Sound Level. Further definition, and the rationale for the use of this descriptor appears in Section 4.

These standards meet the requirement of the Court order of providing comprehensive preemption, because they encompass essentially all equipment within the facilities.

Table 2.1(c).—*Equivalent of 70 L_{dn} for 24 Hours in A-weighted dB*[2]

Cumulative hours	Day (15 hours)	Night (9 hours)
2	81	71
3	79	69
4	78	68
5	77	67
6	76	66
8	75	65
10	74	.....
12	73	.....
15	72	.....

[2] Values are rounded up to next dB.

Table 2.1(d).—*Equivalent of 65 L_{dn} for 24 hours in A-weighted dB*[3]

Cumulative hours	Day (15 hours)	Night (9 hours)
2	76	66
3	74	64
4	73	63
5	72	62
6	71	61
8	70	60
10	69	.....
12	68	.....
15	67	.....

[3] Values are rounded up to next dB.

Tables 2.1(c) and 2.1(d) provide a simplified reference for determining the compliance or non-compliance of a railroad facility. The tables delineate the mathematical maximum L_{eq} limits, for a specified number of hours over one hour, that are equivalent to the L_{dn} 70 and L_{dn} 65. (E.g. If one is measuring L_{eq} at a railroad facility for 2 hours during the day and attains a value of 81 L_A, from Table 2.1(c), this would be considered equivalent to 70 L_{dn}. Thus the facility would be considered in compliance, unless a subsequent L_{dn} measurement shows otherwise. if the measured L_{eq} value does not exceed the appropriate value of Table 2.1(c) or 2.1(d), it is still possible that the L_{dn} standard is exceeded, meaning the facility is not in compliance. A facility is not in compliance if its measured noise level exceeds either the L_{dn} standard or the L_{eq} standard. if the measured L_{eq} were to be greater than 81 L_A, for the 2 hour daytime measurement period, the facility would be considered in non-compliance since the equivalent L_{dn} would mathematically exceed the 70 L_{dn} standard).

Retarder Noise

It is proposed that, effective on the date shown, retarder noise levels shall not exceed the level specified in Table 2.2, when measured at a distance of 30 meters as prescribed in Subpart C.

Table 2.2.—*Proposed Retarder Noise Standard*

Effective Date	Standard, L_A
January 1, 1982	90 dB

The rationale for a specific standard for retarders also appears in Section 4.

Refrigerator Car Noise

It is proposed that, effective January 1, 1982, refrigerator car noise, when the car is not in motion shall not exceed 78 dBA at 7 meters, as shown in Table 2.3. Noise levels are to be measured as prescribed in Subpart C.

Table 2.3.—*Proposed Refrigerator Car Noise Standard*

Effective date	Standard, L_A
January 1, 1982	78 dB

The rationale for a separate standard for refrigerator cars appears in Section 4.

Car Coupling Noise

It is proposed that, effective January 1, 1982, noise measured during car coupling operations shall not exceed 95 dBA at 30 meters, as indicated in Table 2.4, when measured as specified in Subpart C. This requirement is waived for situations where it is demonstrated that car creating levels in excess of the standard are not traveling at greater than 4 mph at the point of impact.

Table 2.4.—*Proposed Car Coupling Noise Standard*

Effective date	Standard, L_A
January 1, 1982	95 dB

The rationale for a car coupling standard appears in Section 4.

3.0 Technology and Cost

According to Section 17 of the Noise Control Act of 1972, entitled *Railroad Noise Emission Standards*, and as ordered by the Court, we are required to publish noise emission standards which set limits on the noise emission resulting from the operation of equipment and facilities of interstate rail carriers. Standards established must reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance.

In order to fulfill the requirements of Section 17, we undertook a study of the interstate rail carrier industry, the principal sources of railroad noise, available noise control technology to quiet the sources of railroad noise, and the costs to implement the noise control and technology.

Technology

In our study to identify the best available technology, we were guided by the following definitions.

"Best available technology" is that noise abatement technology or technique available for application to equipment and facilities of surface carriers engaged in interstate commerce by railroad which produces the greatest achievable reduction in the noise produced by such equipment and facilities. "Available technology" is further defined to include:

1. Technology or techniques which have been demonstrated and are currently known to be feasible.

2. Technology or techniques for which there will be a production capacity to produce the estimated number of parts required in reasonable time to allow for distribution and installation prior to the effective date of the regulation.

3. Technology or techniques that are compatible with all safety regulations and takes into account operational considerations including maintenance, and other pollution control equipment.

Noise Sources

Noise resulting from rail facilities is a complex mixture of sounds generated by many different pieces of equipment and operations. Before identifying whether and what technology was available to quiet the noise from such facilities, we first had to identify the specific sources and operations causing the noise. Studies and investigations were conducted to give us this information.

Railyard facilities may be categorized into two basic types: hump yards and flat yards. Hump yards perform both the classification and industrial service functions for U.S. railroads. This type of yard generally consists of a subyard to receive incoming line-haul traffic, a subyard where these trains are broken up and reassembled into outbound configurations, and a subyard for outbound traffic. The unique characteristic of hump yards is that they employ a gravity-feed system between the receiving subyard and the classification subyard. This system consists of a hump crest and a series of devices called retarders to control the speed of cars as they are routed to areas where trains are assembled.

Flat yards also perform the classification and industrial service functions for the railroad system. Yard switch locomotives replace the crest/retarder system of the hump yards to move cars out of the receiving tracks and use either continuous push or acceleration/braking techniques to distribute them into specific classification tracks. The continuous push or the accelerate/brake action of the switch locomotive accomplishes the same function in a flat yard as the "crest-roll-retard" action in a hump yard.

Listed below are the significant noise sources associated with railyards:

- Engine noise from locomotives and switch engines
- Retarder squeal
- Refrigerator car noise
- Car-coupling noise
- Load cell testing, repair facilities and locomotive service area noise
- Wheel/Rail noise
- Horns, bells, whistles
- Trailer on flat car, container on flat car (TOFC/COFC)

The above sources of noise are common in both flat an hump yard facilities, except for retarder squeal which is common only in hump yard facilities. In flat yards, locomotives are a particularly important noise source due to their number and high activity requirement to physically move rail cars within the yard in the car classification process.

Because of such differences in importance of various individual noise sources between hump and flat yard facilities, different degrees of technology would be required for important noise sources to enable hump and flat yard facilities to meet the same property line noise level. In the case of flat yards where locomotives are an important noise source the amount of noise reduction technologically achievable at this time is more limited than the noise reduction technologically achievable for retarders for example. As a result of these differences it is expected to be more difficult and costly for flat yard facilities to meet property line noise levels at this time as low as hump yard facilities.

We investigated whether technology existed to control all but the wheel/rail noise and the warning or information imparting systems. The noise from wheel/rail interactions was not addressed. Present railroad maintenance practice of grinding car wheels (to assure their roundness) and rails (to assure their smoothness) is one of the principal currently available methods for reducing moving railcar noise. Both of these maintenance practices are addressed in the December 31, 1975 regulation. Federal Railroad Safety Regulations require wheel and rail grinding. Continued adherence to these regulations should minimize wheel/rail noise.

We have determined that technologies listed below are currently available to control the sources listed. It is these technologies that we have factored into our cost of compliance assessment.

Noise source	Noise control technology
Switch Engine Noise	Exhaust muffling and cooling fan treatment.
Retarders (master & group)	Barriers; retarder lubricating and ductile iron shoes.
Inert Retarders	Replace with releasable type.
Refrigerator Car Noise	Exhaust muffler and partial enclosure.
Load Cell Testing, repair facilities and service areas.	Enclose facility or relocate facility.
Car Coupling	Speed control.

Cost

"Cost of compliance" is the cost of identifying what action must be taken to meet the specified noise emission level, the cost of taking that action, and any additional cost of operation and maintenance caused by that action.

We have estimated the capital investment necessary to apply the available noise control technologies. The estimates consider the capital resources to purchase, fabricate and install the noise control technology. Capital investment represents the initial and subsequent investments that would be required to implement the technologies. We have also estimated total compliance costs on an annualized basis. The annualized costs also include incremental operating costs such as maintenance and fuel. These costs were developed from considerations of the elements of capital recovery, based on a 10 percent interest factor and the expected useful life for each type of noise abatement procedure.

In developing the cost of compliance, we have not included costs for disruption of service or removal of equipment and facilities from service. We believe we have established noise limits and allowed sufficient time for the implementation of the standards to avoid disrupting effects on rail operations. We are particularly interested in hearing from any who do not share this view and solicit information or data we may factor into our analysis.

We request comment not only on the cost and feasibility of attaining the standard, but also on the additional cost and financial impact on railroads due to moving from a 70 decibel to a 65 decibel standard for hump yards. This information will help the Agency to conclude whether the incremental costs of the 65 decibel standard for hump yards is reasonable.

4.0 Rationale for Standards Selection

Need for Health and Welfare Analysis

The Association of American Railroads has argued that public health and welfare related to noise are to be totally absent from the Agency's consideration. EPA does not share this view.

The Noise Control Act of 1972, 42 U.S.C. 4901 et seq., which places the duty upon EPA to reduce the noise from certain sources by regulations, declares that the policy of the United States is "to promote an environment for all Americans free from noise that jeopardizes their health or welfare." 42 U.S.C. 4901. Section 17 of that Act, which requires the EPA Administrator to publish regulations establishing noise emission limits on the facilities and equipment of interstate rail carriers, directs EPA to set standards that reflect the degree of noise reduction achievable through application of the best available technology taking into account the cost of compliance. 42 U.S.C. 4916(a). While that charge does not include a requirement for the consideration of the necessity for the protection of the public health and welfare, it is manifest that the standards cannot and should not be set in a void of information concerning those needs.

First, it is not possible to assess the best available noise reduction technology without having as a guide a noise control objective. There must be a target noise reduction in order to assess how effective technology is in accomplishing its objective. Since the reason that noise is sought to be reduced by any level of government to prevent the impingement on health and welfare, it is reasonable that the noise descriptor used be one that relates best to protecting the public health and welfare. For this reason, EPA has used a descriptor (L_{dn}) which correlates well with human response to assess the effectiveness of various types of available technology and to identify the "best".

Second, it is not possible to meaningfully take into account the cost of compliance without having an objective toward which those costs are imposed. The very best available technology is not always affordable. By the same token, the greatest reasonable cost that could be imposed is not always justifiable by the objectives of the regulation. Yet the Noise Control Act does not say that no costs should be imposed upon the industry. Rather, it is inherent in Section 17(a) that the costs that are imposed for noise control must be reasonable. The only means of judging whether they are reasonable is to scrutinize what they purchase, and the only utility of noise reduction is the protection of public health and welfare.

An additional way in which public health and welfare must affect cost determinations is in selecting the types of controls that the Agency will require. For instance, if EPA were to determine that the railroad industry could expend "x" million dollars per year for noise control, it would be irrational public policy to require that these funds be spent in areas where no one would benefit from them, if there were another way to benefit "y" people by spending the same "x" million dollars. This rationale is applied in this proposal by limiting facility noise measurements to receiving property as defined in § 201.1(kk), thereby eliminating the requirement to comply where people are not exposed to railroad noise.

In summary, EPA has concluded that public health and welfare plays an important role in setting standards under Section 17 of the Noise Control Act. The Act does not authorize the Agency to set standards at costs that are unreasonable in order to protect the public health and welfare. For this reason, the standards proposed in this regulation do not require abatement to the levels necessary to provide total protection to the public health and welfare. However, in assessing what available technology can accomplish in terms of meaningful noise reduction, in determining the limits beyond which costs should not be imposed, and in selecting the types of controls that should be imposed at that level of expenditure, consideration of the effects of noise reduction on public health and welfare are within the intent of the Act.

Overall Standard for Facilities and Equipment

Our studies show there exists available technology to reduce rail facility noise significantly at reasonable cost. We therefore are proposing standards which will limit the noise emissions from railroad equipment and facilities.

Specifically, the proposed regulation is applicable to all railroad equipment and facilities except: Mainline rail operations, horns, bells and whistles, facilities not directly associated with railroad trackage (e.g. an office building in a downtown area) and maintenance-of-way equipment.

- Mainline Rail: The control of noise from locomotives and rail cars is the principal noise abatement approach to the control of noise along the main lines. EPA could impose further limitations on the main line, but probably not without imposing major restrictions on the frequency of operations or the construction of barriers at an exorbitant cost. We therefore have proposed that the locomotive and rail car regulation limits contained in our previous regulation will be the only EPA restrictions on mainline operations.
- Horns, Bells and Whistles: Horns, bells and whistles and other warning devices produce a form of noise intended to be heard for safety reasons, instead of being an unwanted by-product of some activity. We do not intend therefore to set standards affecting these devices through this regulation.
- Facilities Not Directly Associated With Railroad Trackage: These regulations are not applicable to facilities such as tug boats, downtown office buildings and micro-wave relay towers. These items are not considered to be common noise sources forming the typical mix of railroad equipment and facilities.
- Maintenance-of-Way Equipment: EPA has identified some 17 pieces of equipment, not counting variations, comprising this category. To date, the Agency has been unable to identify clearly the noise levels of the specific pieces of equipment or the collective levels of possible combinations in which they might be used. Without this, the availability of technology or the costs of compliance cannot be determined. Consequently, EPA cannot set a specific aggregate noise limit (such as a not-to-exceed property-line limit circumscribing given maintenance-of-way work situations) or source limits on individual pieces of equipment.

To characterize rail facility noise and to place a limit on its level, we have chosen L_{dn}. L_{dn} is the Day-Night Sound Level. It is the primary community noise descriptor used by EPA to correlate with known effects of the noise environment on an individual and the general public. In the process of arriving at an L_{dn} value, noise levels occurring during the nighttime hours are weighted, 10 dB is added to the noise occurring during nighttime hours, to account for a greater degree of intrusiveness and its impact during the quieter nighttime ambient. L_{dn} is recognized within the scientific community as a good descriptor of the effect of noise on people and has been used by EPA in all of its previous noise control regulations in assessing the health and welfare benefits of regulatory actions.

Before settling on the L_{dn} descriptors, we reviewed several types of descriptor, including $L_{eq(24)}$ which has been

recommended by the AAR. The L_{eq} descriptor does not account for the greater degree of nighttime intrusiveness of noise by the addition of 10 dB to noise occurring during nighttime hours.[4] As such, L_{eq} does not correlate as well with known effects of the noise environment on the public. Since a noise control program is designed to reduce noise as it adversely affects the public health and welfare, if appears fundamental to us to account for known effects at nighttime. The disruption of sleep is one known effect. In this spirit, we have incorporated two L_{eq} descriptors; one for daytime and one for nighttime. Thus, we have not dismissed the use of the L_{eq} descriptor. We are proposing an hourly equivalent sound level, $L_{eq(1)}$ which is a separate standard independent of the L_{dn} standard. In actual use a one hour $L_{eq(1)}$ measurement would be made and compared with the daytime or nighttime $L_{eq(1)}$ limit as appropriate. A principal reason for including the hourly equivalent standards was to provide a short, simpler method for determining compliance with this regulation.

The standard as proposed sets limits for hourly L_{eq} values that are equivalent to a 24-hour L_{dn} assuming all of the acoustic energy which occurred during a 24-hour period occurred only during the hour or hours included in the L_{eq} measurement. More simply put, it is physically impossible to exceed the hourly L_{eq} value and not also exceed the 24-hour L_{dn} standard. Tables are also provided to determine compliance, based on the same principal if cumulative L_{eq} measurements are made for more than 1 hour. Because the L_{eq} and L_{dn} 24-hour standards are independent, it is possible to meet the hourly L_{eq} standard or its equivalent as specified in the tables and still fail the 24-hour L_{dn} standard. The technology and cost considerations upon which this regulation is proposed are based on the 24-hour L_{dn} standard, which is the most stringent of the standards required under this proposal. Therefore, the cost and technology projections presented are conservative from this perspective. It is anticipated however, that the principal compliance actions which may result from this regulation would utilize the shorter, simpler hourly L_{eq} standard. We welcome comments on this approach to an hourly L_{eq} standard.

We have determined that technology associated with the noise abatement techniques listed in Table 4.1 is available to limit flat and hump yard noise to an L_{dn} of 70, at or beyond the yard boundary. Details of the technology are discussed in the Background Document.

Table 4.1.—*Noise Abatement Techniques to Limit Flat and Hump Yard Noise to L_{dn}=70*

Technique	Flat yard	Hump yard
Refrigerator Car Treatment	x	x
Switch Engine Treatment	x	x
Relocate or Enclose Load Cell Test Site	x	x
Relocate or Shut Down Idling Locomotive	x	x
Retarder Noise Barriers	x	x

We have also determined that technology associated with the noise abatement techniques listed in Table 4.2 is available to further limit flat and hump yard noise to an L_{dn} of 65, at or beyond the yard boundary. Details of the technology are discussed in the Background Document.

Because of the differences between hump yard facilities and flat yard facilities previously discussed, different techniques are required to control the noise level. The two types of yards require the same techniques to meet an L_{dn}=70 (aside from retarder noise barriers for hump yards); however meeting an L_{dn}=65 requires hump yards to further control retarder noise while flat yard facilities must make operational changes.

Table 4.2.—*Noise Abatement Techniques to Limit Flat and Hump Yard Noise to L_{dn}=65*

Technique	Flat yard	Hump yard
Refrigerator Car Treatment	x	x
Switch Engine Treatment	x	x
Relocate or Enclose Load Cell Test Site	x	x
Relocate or Shut Down Idling Locomotive	x	x
Retarder Noise Barriers	.....	x
Fully Enclose Engine Repair/Car Service	x	.....
Reschedule Nighttime Activities/Limit Number of Classifications	x	.....
Ductile Iron Retarder Shoes	.....	x
Releasable Inert Retarders	.....	x

We have assessed the cost of compliance, including the economic impact associated with the cost, and taken it into account in selecting our standards. This assessment led to the conclusion that the cost to quiet flat yards to an L_{dn} of 70 and hump yards to an L_{dn} of 65 was not unreasonable. The L_{dn} 65 standard for hump yards increases the cost of the regulation over a general L_{dn} 70 standard and does not improve the benefit/cost ratio. We are proposing this standard because the technology required is available and we believe that the costs are reasonable. Our analysis of the cost for flat yards to achieve an L_{dn} of 65 indicated it would cost over 200 times the cost to quiet hump yards to this level because of the necessity for the flat yard to alter operations to achieve the 65 L_{dn} value and because of the very large number of flat yards. We therefore concluded it would not be reasonable to impose an L_{dn} of 65 on flat yards until noise abatement techniques, other than the alteration of existing railyard activities, became available, or unless an appropriate subcategorization of flat yards could reasonably be made thus requiring only some to attain this noise level. Comments contending operational changes should clearly demonstrate that all available noise control hardware were assessed before operational changes were considered necessary.

Standards for Specific Pieces of Equipment or Operations

In addition to the L_{dn} property line standard, standards are being proposed for three specific sources of railroad noise. These standards would limit the noise emissions from retarders, mechanical refrigeration cars and railcar coupling operations. Specific standards are being proposed for these three sources for the following reasons.

Retarder Standard. The retarder is a braking device used to reduce railcar speeds during classification operations in hump yards. The clamping action of the retarder against the wheels of the rail cars causes a highly audible and annoying screech to be emitted. Though the screeches are each of short duration, their character is such that they represent a major problem in terms of annoyance. A property line limit in terms of L_{dn} that measures the average level of noise occurring over a 24 hour period and does not account sufficiently for this source of irritating and intrusive noise. Technology is available to control retarder noise and we are, therefore, proposing an A-weighted sound level standard of 90 dB at 30 meters. Compliance with the standard would reduce retarder noise by as much as 20 dB or more.

The retarder standard does not apply to the inert retarders commonly located near the end of each classification track. Inert retarders act to hold the first rail car in place while additional cars are coupled to it forming a consist of cars on a classification track. Squeals may be produced by inert retarders when the consist of railcars are coupled to a locomitive and the train pulled through the inert retarder. Due partly to lower braking pressure, shorter retarder length, and very short duty cycle inert retarders generally create lower noise levels and much less frequent squeals than the other types of retarders described above. Consequently, EPA is not proposing a specific noise source standard for inert retarders. However a good noise abatement approach that is available for inert retarders is to install releasable units (which create no noise)

[4] The AAR recommendation for Leq is to avoid the application of 10 dB nighttime weighting factor. They are concerned that such an imposition "has the potential of severely hampering rail operations unless great care is taken in setting the allowed levels."

for all new construction and replacement appplications.

The only case where replacement requirement for and cost of releasable inert retarder replacement was considered necessary was to meet the proposed final hump yard facility receiving property standard.

Mechanical Refrigerator Car Standard. Refrigerator cars are special purpose cars used to transport perishable goods. The car cooling systems are powered by diesel engine-driven compressor units. The cars are often parked in large groups consisting solely of these units. They are often parked near a rail carrier's property line and the incessant drone created by the equipment on the cars can be a serious noise problem. Since refrigerator cars travel from yard to yard, a souce standard for this equipment is being proposed to place the burden of compliance on the car owner and not on each yard operator where the cars travel. Better mufflers for the diesel engine and engine enclosures treated with absorptive foam are available for quieting these noise emission levels at a reasonable cost. Compliance with the proposed A-weighted sound level standard of 78 dB at 7 meters is expected to reduce mechanical refrigerator car nose by about 10 dB in the noisiest known situation.

Car Coupling Standard. Impact noise resulting from the coupling of railroad cars is a major noise problem for those living around railyards. Where few couplings occur in a yard over a 24–hour period, it is possible for the overall facility and equipment standard to be met without the best available technology being applied to reduce noise emissions. The reason for this again relates to the short duration of peak noise levels.

We have conducted car coupling noise tests to determnine the relationship between car coupling speed and noise. The results of our study show a direct relationship between noise and speed. As car coupling speed increases so does the level of noise emitted upon car coupling.

We reviewed car coupling practices of several yards to learn of the rules that govern the speeds at which cars are coupled. Our information indicates that a 4 mile per hour guideline has been adopted as a generally accepted "best practice" by rail carriers to prevent damage to cars and freight alike.

The studies we conducted show that for all known situations noise levels resulting from car couplings at or below 4 miles per hour do not exceed an average A-weighted sound level of 95 dB at 30 meters. Therefore, we are proposing a standard to limit car coupling noise to an A-weighted sound level of 95 dB at 30 meters, since this limit has offsetting benfits in protection of cars and freight, and appears to be an accepted "best practice" present procedure in use by many rail carriers as well. This regulation essentially codifies existing general practice and thus should result in no additional costs to rail carriers. This standard is waived where it is demonstrated that cars are not travelling at greater then 4 mph at point of impact and yet exceed the specified noise level.

5.0 Impact of the Proposed Regulation

Health and Welfare

The impact of the proposed regulations on rail carrier facility and equipment noise can be expressed as the reduction in the number of people subjected to noise that may jeopardize their health and welfare. The number of people affected depends upon the penetration of the noise into the community and the number of people in proximity to the railroad property. To investigate this impact we seleced over 100 railroad yard sites throughout the country and studied information relative to population densities and types of land use around the site. We combined these results with the total number of railroad yard facilities by type of yard and predicted noise impact on the population. From the analysis, we estimate that there are about four million people in the United States exposed to day-night average railyard noise levels of 55 L_{dn} or greater. An outdoor L_{dn} value of 55 dB is the level of noise EPA has identified as being protective of public health and welfare with an adequate margin of safety.[5]

Compliance with our proposed standards for existing yards is, therefore, expected to provide an environment free from railroad noise that jeopardizes the health and welfare for about 830 thousand of our Nation's people. The benefits are likely underestimated since they were computed from census data and, thus, only include residential impact while ignoring commercial and industrial impact.

Cost

In developing the estimated cost of this proposed regulation the following sequential procedure was used:

1. Identify noise sources located in rail yards.
2. Identify noise abatement procedures that can be applied to each source.
3. Estimate the noise abatement resulting from the application of each procedure.
4. Determine the number and type of procedures which must be applied to achieve selected noise levels at yard boundaries.
5. Estimate the costs incurred to measure yard noise levels.
6. Calculate the costs incurred to apply all necessary procedures.
7. Estimate the costs incurred to measure yard noise levels.
8. Calculate the total costs to achieve specified maximum noise levels at yard boundaries for all rail yards.
9. Develop cost estimates to achieve the same maximum noise level at yard boundaries through the acquisition of additional property around each yard.
10. Apply the above cost estimates to all major and other railroad companies.

In summary from table 4.3 presents the estimated cost by noise source and railyard facility type for compliance with a 70 L_{dn} standard effective in 1979.

[5] Information of Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety, 550/9–74–004, U.S. EPA, Washington, D.C., 1974.

Table 4.3.—*Cost Estimates for Noise Abatement of U.S. Railroads to Reach L_{dn} 70*

Noise sources	Control techniques			
Type	Type	Unit cost	Capital costs ($000)	Annualized costs ($000)
Hump Yards: 124:				
Master Retarders	Barrier Sets	$22,500	$2,790	$594
Group Retarders	Barrier Sets	15,000	11,160	2,374
Switch Engines	Mufflers and Fan Treatment	1,200	372	170
Load Test Site	Relocate or Enclose	90,000	2,790	575
Measurement	Instru	10,000	1,240	582
Subtotal—Hump yard costs			18,352	4,295
Flat Classification Yards: 1113:				
Switch Engines	Mufflers and Fan Treatment	1,200	3,340	1,527
Load Test Site	Relocate or Enclose	90,000	16,650	3,430
Measurement			1,013	
Subtotal—Flat classification yard costs			19,990	5,970

Table 4.3.—*Cost Estimates for Noise Abatement of U.S. Railroads to Reach L_{dn} 70*—Continued

Noise sources	Control techniques			
Type	Type	Unit cost	Capital costs ($000)	Annualized costs ($000)
Industrial Yards: 1381:				
Switch Engines	Mufflers and Fan Treatment	1,200	4,142	1,894
Measurement	Instru	10,000	4,630	4,311
Subtotal—Industrial yards			8,772	6,205
Refrigerator Cars	Mufflers and Fan Treatment		110	2,640
Grand total			49,764	16,798

Table 4.4 identifies the additional control technique and costs that would be necessary for hump yard facilities to meet a 65 L_{dn} standard in 1979.

2Additional Costs for Hump Yard Facilities To Go From L_{dn} 70 to L_{dn} 65

Noise sources	Control techniques			
Type	Type	Unit cost	Capital costs ($000)	Annualized costs ($000)
Hump Yards: 124:				
Master and Group Retarders	Ductile Iron Shoes	$112,000		$13,061
Inert Retarders	Releasable Retarders	10,000	$10,960	10,496
Total—Hump yard costs			39,960	24,357

After making the necessary adjustment for the effective dates in the proposed regulation, the total capital investment to the railroad industry for compliance with the proposed regulation is estimated to be approximately $91 million. The total annualized cost for compliance is estimated to be about $27 million industry-wide. By contrast, were we to require a level of 65 L_{dn} at all railyards (both flat yards and hump yards), the annulized cost would be over 4 billion dollars. This large increase in cost is due to the non-availability of technology to further quiet flat yard equipment, thus requiring either curtailment of operations or purchase of additional buffer land around rail yard facilities. Because the cost of operational curtailment was extremely difficult to estimate with any confidence, purchase of noise buffer land was assessed and resulted in the 4 billion dollar estimate. On this basis, it was determined that the more stringent standard cannot be imposed at a reasonable cost at this time.

Economic Impact

A separate analysis of the economic impact upon the railroad industry and individual firms comprising Class I and Class II railroads [6] was undertaken. Our analyses are purely statistical in nature and relay on assumptions regarding future conditions of the railroad industry and the U.S. economy. The economic impact analysis (cash flow/closure analysis) is based on projections determined from the previous three years of historic data. The financial ratio analysis is based on 1976 statistics. The possible loss of revenue to trucks is likely to be mitigated as a result of the noise regulations which are presently in effect for new medium and heavy duty trucks and motor carriers. However, EPA solicits additional information on the cross-elasticities of transportation modes. Therefore, our estimates of the impact on railroad cost of doing business and employment are at best a first approximation.

Although we recognize the financial problems of the railroads we conclude that the proposed noise regulation will not result in a significant burden on either the railroad industry or any of the individual Class I and Class II railroads that are in relatively good financial condition. We realize that the borrowing capacity to finance noise abatement equipment is limited and that railroads already have negative net worth or cash flows. Those railroad companies that are in marginal financial condition and whose parent company (where applicable) is also in marginal financial condition may be more severely impacted. Based upon our analysis of potential closure, we feel there is limited potential for closure directly caused by the regulation and request limited potential for closure directly caused by the regulation and request comments from individual railroads on this. It is anticipated that the implementation of the proposed standards could increase the average unit price of principal freight shipment services by 0.4 percent. It is also anticipated that the demand for rail carriers to transport freight could decrease on the average by 0.5 percent.

To assess the potential impact on employment that might occur as the result of this rulemaking, we first looked at present employment levels and revenues of the railroad industry. Extrapolating from the costs that could be incurred to meet the proposed rule, we statistically determined the net railroad revenue reductions could affect employment in two sectors: the railroad industry and suppliers of noise abatement materials and equipment. After the regulations are in effect, and over a subsequent 19 year compliance period, the railroad industry could experience a cumulative *decrease* of up to fourteen hundred employees. This decrease accounts for anticipated changes in the total operating revenues of railroads resulting from the estimated compliance costs to meet the regulation proposed. The suppliers on the other hand could experience an *increase* of up to two hundred employees. This increase takes into account the average employment change resulting from the procurement and fabrication of the noise control materials and equipment. The overall employment effect is, then, estimated to be an approximate cumulative twelve hundred worker decrease between the year 1981 and 2000.

We conducted an analysis of economic impact of bankrupt roads as well as those recently reorganized to form the Consolidated Rail Corporation (Conrail). The bankrupt roads included Boston and Maine; Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific; and Morristown & Erie. From the analyses, we concluded that the proposed noise regulation could increase the average unit price of commodity shipments by up to 0.4 percent. Further, we concluded that there could be a decrease in the demand for railroad carrier services up to 0.5 percent on all bankrupt roads, except Boston and Maine Railroad where the decrease could approach 0.6 percent. We estimate a net employment decrease in the workforce of these roads by a

[6] Operating railroads (including switching and terminal companies) are classified by the Interstate Commerce Commission in terms of annual operating revenues. Effective January, 1976 the break point between Class I and Class II railroads was $10 million; and on January 1, 1978 it was raised to $50 million.

total of about 400 workers, with over 300 workers related to those firms comprising Conrail.

The proposed regulation is not expected to have a measureable effect upon the Gross National Product (GNP).

In developing the proposed regulation we endeavored to acquire and use all available and accessible data in the timeframe available to us under the court order. We will continue our efforts to evaluate the impact on all railroads for which the regulations apply as we move to finalize our revised regulation. We welcome comments on the impact of the proposed regulation on individual railroads, with specific indication of the role which financial assistance already being made available by the Federal Government might play in mitigating any adverse economic impact.

6.0 Enforcement

The Noise Control Act places primary enforcement responsibility with the Federal Railroad Administration (FRA) of the Department of Transportation (DOT). Specifically, Section 17 of the Act directs the Secretary of DOT to promulgate regulations to ensure compliance with the EPA railroad noise standards. In addition, Section 17 directs the Secretary of DOT to carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Act, the Interstate Commerce Act, and the Department of Transportation Acts.

The FRA has indicated EPA that it will promulgate compliance regulations and will conduct compliance investigations. However, resource constraints may result in limited enforcement activity at the Federal level.

Since the needs for strict enforcement of the regulations may vary considerably among localities, EPA anticipates that the major enforcement activity will need to be conducted by State and local agencies if the regulations are to be effective. In fact, EPA has designed these regulations in a manner which will facilitate the adoption and enforcement of identical regulations by State and local governments. In addition EPA does plan to provide some technical assistance to State and local agencies to assist them with their enforcement programs.

7.0 Public Comment

The Agency is committed by statute and policy to public participation in the decision making process for its environmental regulations. We encourage and solicit communications and comments from as many diverse views as possible on all aspects of the proposed regulation. Normally the Agency allows 90 days for public comment on a proposed rule such as this. However, Section 17 of the Noise Control Act limits the amount of time between proposal and final publication of railroad noise emission standards to 90 days. This means we must limit the public comment period to allow time to fully review comments received so that we may weigh them appropriately in drafting the final regulation. Therefore, the public comment period will close at 4:30 pm on June 1, 1979.

8.0 Background Document

We have compiled information and data used as a basis for the proposed regulation into a single document entitled "Background Document for Proposed Revision to Rail Carrier Noise Emission Regulation". The document may be obtained from: U.S. Environmental Protection Agency, Public Information Center (PM–215, Room M2194D), Waterside Mall, Washington, D.C. 20460, (202) 755–0717.

Evaluation Plan

We intend to review the effectiveness and need for continuation of the provisions contained in this action no more than five years after initial effective date of the final regulation. In particular, we will solicit comments from affected parties with regard to actual cost incurred and other burdens associated with compliance and will also review noise data after the interstate rail carrier noise emission regulations go into effect as to its effectiveness.

Reporting and Recordkeeping Requirements

We are not aware that this proposed regulation would impose any significant new or additional reporting or recordkeeping requirements on affected parties. We, therefore, specifically invite comment as to any substantial additional budens and how they might be reduced.

Regulatory Analysis

We have determined that this action is not a "significant" regulation and therefore have not prepared a Regulatory Analysis as would be required by Executive Order 12044.

Environmental Impact Statement

We have prepared a draft Environmental Impact Statement which presents the effect of the proposed regulation. This document may be obtained from our Public Information Center whose address appears above.

This regulation is proposed under the authority of Section 17 of the Noise Control Act of 1972, (42 U.S.C. 4916).

Dated: April 4, 1979.

Douglas Costle,

Administrator.

It is proposed to amend 40 CFR Chapter 1 by amending Part 201 as follows:

1. The Table of Contents for Part 201 reads as follows:

Subpart A—General Provisions

Sec.
201.1 Definitions.

Subpart B—Interstate Rail Carrier Operations Standards

201.10 Applicability
201.11 Standard for locomotive operation under stationary conditions.
201.12 Standard for locomotive operation under moving conditions.
201.13 Standard for rail car operations.
201.14 Standard for refrigeration cars under stationary conditions.
201.15 Standard for car coupling operations.
201.16 Standard for retarders.
201.17 Standard for noise on receiving property.

Subpart C—Measurement Criteria for Specific Equipment/Facility Items

201.20 Applicability and purpose.
201.21 Quantities measured.
201.22 Measurement instrumentation.
201.23 Acoustical environment, weather conditions, and background noise for locomotives and rail cars.
201.24 Procedures for the measurement of locomotive and rail car noise.
201.25 Acoustical environment, weather conditions background noise for stationary refrigeration cars, car coupling operations, and retarders.
201.26 Procedures for the measurement of stationary refrigerator cars, car coupling operations and retarders.

Subpart D—Measurement Criteria for Noise on Receiving Property

201.30 Applicability and purpose.
201.31 Measurement instrumentation.
201.32 Measurement locations and weather conditions.
201.33 Procedures for measurement.

Authority: Section 17 of the Noise Control Act of 1972 (42 U.S.C. 4916).

PART 201—RAILROAD NOISE EMISSION STANDARDS

2. Section 201.1 is amended by deleting paragraph (l), redesignating paragraphs (m) and (n) as new paragraphs (l) and (m) respectively, and by adding new paragraphs (n) through (tt) to read as set forth below.

Subpart A—General Provisions

§ 201.1 Definitions.

* * * * *

(n) "Adjusted Measured Sound Level" means the measured day-night sound level of the combination of all sounds received at the measurement location minus one decibel.

(o) "Car Coupling Test" means measurements made to determine the level of noise produced when one or more rail cars couple with one or more other rail cars or when a locomotive couples with one or more rail cars.

(p) "Clearly Dominant Sound" means a sound which contributes ⅘ of the total value of the day-night weighted, or hourly, A-weighted squared sound pressure resulting from that sound and all other sounds. The level of a clearly dominant sound is within one decibel of the adjusted measured sound level; or equivalently, the component day-night sound level associated with the combination of all other sounds is at least 6 decibels below the level of the component which is clearly dominant.

(q) "Component Sound Level" means the sound level, in decibels, associated with a single class of sounds, or with the sound from a specific source or type of source.

(r) "Component Sounds from Railroad Facility Operations" means all sounds emanating from equipment operating within railroad facilities, except for the sounds of through trains.

(s) "Component Sounds from Non-railroad Facility Operations" means all sounds that contribute to the measured sound at a community measurement location which emanate from sources not under the operational control of a railroad; e.g. residential neighborhood component, aircraft component, traffic component, etc.

(t) "Component Sounds from Through Trains" means all sounds emanating from through trains.

(u) "Day-night Sound Level" means the 24-hour equivalent sound level, in decibels, for the period from midnight to midnight, obtained after addition of ten decibels to sound levels produced from midnight to 7 a.m. and 10 p.m. to midnight (0000 to 0700 and 2200 to 2400 hours). When the day-night sound level is measured, it is not necessary that the measurement period begin at midnight. It is abbreviated by L_{dn}.

(v) "Day Sound Level" means the equivalent sound level, in decibels, over the 15-hour time period from 7 a.m. to 10 p.m. (0700 to 2200 hours).

(w) "Decibel" means the unit measure of sound level and other kinds of levels. It is abbreviated as dB.

(x) "Dominant Sound Component" means that the sound from a defined class of sound contributes at least one-half of the total value of the day-night weighted, or hourly, A-weighted squared sound pressure resulting from that sound and all other sounds.

(y) "Energy Average Level" means a quantity calculated by taking ten times the common logarithm of the arithmetic average of the antilogs of one-tenth of each of the levels being averaged. The levels may be of any consistent type, e.g. maximum sound levels, sound exposure levels, equivalent sound levels, day-night sound levels, etc.

(z) "Energy Summation of Levels" means a quantity calculated by taking ten times the common logarithm of the sum of the antilogs of one-tenth of each of the levels being summed. The levels may be of any consistent type, e.g. day-night sound level, equivalent sound level, etc.

(aa) "Equivalent Sound Level" means the level, in decibels, of the mean-square A-weighted sound pressure during a stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals. It is the level of the sound exposure divided by the time period.

(bb) "Hourly Equivalent Sound Level" means equivalent sound level, in decibels, over a one-hour time period, usually, but not necessarily, reckoned between integral hours. It may be identified by the beginning and ending times, or by the ending time only. It is abbreviated as $L_{eq(1)}$.

(cc) "Mainline Operations" means the movement of trains over the rail lines classified as "main track". "Main track" means a track, other than an auxiliary track, which may extend through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(dd) "Maximum Sound Level" means the greatest A-weighted sound level in decibels measured during the designated time interval or during the event.

(ee) "Measured Day-night Sound Level" means the level measured in accordance with the procedures in this part during any continuous 24-hour period with an integrating sound level meter set to read out the day-night sound level, or calculated using the measured hourly equivalent sound levels.

(ff) "Measured Hourly Equivalent Sound Level" means the level measured in accordance with the procedures in this part during a total period of one hour.

(gg) "Night Sound Level" means the equivalent sound level, in decibels over the split 9-hour period from midnight to 7 a.m. and from 10 p.m. to midnight (0000 to 0700 and 2200 to 2400 hours).

(hh) "Partial Day-night Sound Levels" means the quantity calculated in accordance with the rules for calculating day-night sound level, but utilizing only some of the hourly values of equivalent sound level and substituting zeros for the hourly values not utilized.

(ii) "Railroad Equipment and Facilities" encompasses most equipment and facilities for the maintenance or operation of common carriers engaged in the transportation of persons or property by rail and directly associated with track operations. These terms are more particularly specified as including, but not necessarily limited to, the following:

(1) *Equipment.* (i) Locomotives (self-propelled vehicles designed for and used on railroad tracks in the transport of rail cars, including self-propelled rail passenger vehicles),

(ii) rail cars (non-self-propelled vehicles designed for and used on railroad tracks),

(iii) special purpose equipment (including but not limited to ballast cribbing machines, bolt machines, brush cutters, compactors, welding machines, snow plows, and other numerous types of maintenance-of-way equipment), and

(iv) car ferries, and carfloats.

Note.—Paragraphs (ii)(1)(i) and (ii) of this section are controlled by 40 CFR Part 201, §§ 201.11, 201.12, and 201.13.

(2) *Facilities.* (i) Track, roadbed, and related structures, such as retarders, switches, tunnels, bridges, trestles, stations, yards and shop buildings and the real property upon which they are placed.

(ii) Railroad yards such as flat yards, hump yards, trailer-on-flat car and container-on-flatcar yards, freight house facilities, and locations used for routine maintenance or performance testing of railroad equipment.

(iii) Railroad owned or operated terminal and storage facilities and their related structures used for loading and unloading bulk commodities.

(iv) Railroad owned or operated shops, equipment maintenance facilities, equipment service and testing facilities and engine houses.

(jj) "Railroad Facility Boundary" means the line that separates the property owned or controlled by the railroad and used for movement of rail equipment on railroad track and for other railroad purposes from receiving property. Railroad facilities are linked

together to form an extensive, continuous railroad system (i.e., railroad yard, railroad line, railroad station, railroad line, etc.). Separate boundaries shall be determined for each facility; that is, the simple continuous boundary around each such facility shall be continued through the juncture with any adjacent facility which serves as a link in the rail system; i.e., through a juncture between a mainline roadbed facility and a railroad yard facility, or between a railroad yard facility and a branch line roadbed facility.

(kk) "Receiving Property"means any property that receives the sound from railroad facility operations, but that is not undeveloped or owned or controlled by a railroad; except that occupied residences located on property owned or controlled by the railroad are included in the definition of "receiving property." Railroad crew sleeping quarters located on property owned or controlled by the railroad are not considered as residences.

(ll) "Receiving Property Measurement Location" means a location on receiving property that is on or beyond the railroad facility boundary, or on a residential dwelling measurement surface, and that meets the receiving property measurement location criteria of Subpart D.

(mm) "Refrigeration Car Test" means measurements made to determine the level of noise produced by stationary mechanical refrigerator cars.

(nn) "Retarder Test" means measurements made to determine the level of noise produced when rail car wheels pass through a retarder.

(oo) "Residential Dwelling Measurement Surface" means a connected set of surfaces that are parallel to and are spaced 2 ± 0.5 meters, outside the walls of a residential dwelling.

(pp) "Sound Exposure Level" means the time integral of squared A-weighted sound pressure over a given time period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a reference duration of one second. When used to characterize the noise of a single event, the sound exposure level is measured over the time interval between the initial and final times for which the noise level of the single event exceeds a specified threshold sound level. For implementation in these procedures, the threshold sound level shall be at least ten decibels below the maximum sound level of the event, and otherwise selected such that the sound exposure level measured during the interval in which the sound level exceeds the threshold is within 1.0 decibel of the sound exposure level for a threshold that is 20 decibels below the maximum sound level.

(qq) "Sound Level" means the level, in decibels, measured by an instrument which satisfies the requirements of American National Standard Specification for Sound Level Meters S 1.4–1971 Type 1. For the purpose of these procedures the sound level shall be measured using the A-frequency weighting and the FAST dynamic averaging characteristic, unless designated otherwise.

(rr) "Sound Pressure Level" (in stated frequency band) means the level, in decibels, calculated as 20 times the common logarithm of the ratio of a sound pressure to the reference sound pressure of 20 micropascals (20 micronewtons/square meter). The frequency band must be stated.

(ss) "Through Trains" means trains operating on a mainline roadbed moving continuously (without stopping) through a railroad facility regulated under § 201.17.

(tt) "Undeveloped Property" means any land property that has not been developed for human use in any of the following Standard Land Use Coding Manual (SLUCM) general land use classifications: residential; manufacturing; transportation; communication and utilities; trade; services; and cultural, entertainment and recreational.

Subpart B—Interstate Rail Carrier Operations Standards

3. In Subpart B, § 201.10 is revised, and §§ 201.14, 201.15, 201.16, and 201.17 are added to read as follows:

§ 201.10 Applicability.

The provisions of this subpart apply to equipment and facilities which operate within a railroad facility boundary and under the control of interstate rail carriers, except they do not apply to street, suburban, or interurban electric railways unless operated as a part of a general railroad system of transportation, or as noted in the following:

(a) Provisions are made for noise emission standards which are applicable to the following equipment/facility items:

(1) All locomotives, except steam locomotives, manufactured before December 31, 1979; and except that § 201.11 does not apply to any locomotive type that cannot be connected by any standard method to a load cell.

(2) All rail cars in motion

(3) All mechanical refrigeration cars when stationary

(4) All car coupling operations

(5) All retarders

(b) Provisions are made for noise radiated across the railroad facility boundary to receiving property. These provisions apply to the total noise from all equipment/facility operations within the railroad facility, except that part of the total noise resulting from the operation of through trains that move continuously through the facility. The provisions apply to all receiving property except undeveloped property. When undeveloped property is developed for human use, the initial standards shall become effective 3 years after the change in land use and the final standards effective 6 years after the change.

§ 201.14 Standard for mechanical refrigerator cars under stationay conditions.

After January 1, 1982, the sound level from stationary mechanical refrigerator cars shall not exceed an A-weighted sound level of 78 dB at 7 meters from the centerline of the refrigerator car track at any throttle setting. Compliance with this limit shall be based on measurements made in accordance with the procedures of §§ 201.25 and 201.26 for any throttle setting of the engine.

§ 201.15 Standard for car coupling operations.

After January 1, 1982, the sound level for car coupling operations shall not exceed an A-weighted sound level of 95 dB at 30 meters from centerline of the track on which the coupling occurred. Compliance with this limit shall be based on measurements made in accordance with the procedures of Secs. 201.25 and 201.26. The car coupling requirement can be alternatively met by demonstrating that the car coupling operations are not performed at speeds greater than 4 miles per hour at point of impact.

§ 201.16 Standard for retarders.

After January 1, 1982, the sound level for retarders except inert retarders shall not exceed an A-weighted sound level of 90 dB at 30 meters from the centerline of the retarder track. Compliance with this limit shall be based on measurements made in accordance with §§ 201.25 and 201.26.

§ 201.17 Standards at receiving properties.

(a) The component day-night sound level resulting from railroad facility operations shall not exceed the following limits, except that if it is not

the dominant sound component at the appropriate limit level, it shall not exceed the component day-night sound level resulting from non-railroad operations.

Effective date	Limit $L_{dn(eq)}$ in dB	Facility
January 1, 1982.	70	All Facilities and Equipment.
January 1, 1985.	65	Hump Yard Facilities and Equipment, only.

(b) The component hourly equivalent sound level resulting from railroad facility operations shall not exceed the following limit levels, except that if it is not the dominant sound component at the appropriate limit level, it shall not exceed the component hourly equivalent sound level resulting from non-railroad facility operations.

Effective Date	Limit $L_{eq(h)}$ in dB		Facility
	Day	Night	
January 1, 1982.	84	74	All Facilities and Equipment.
January 1, 1985.	79	69	Hump Yard Facilities and Equipment, only.

A railroad facility shall also be found in non-compliance with this standard if the measured L_{eq} for a specified number of hours, over one hour, exceeds the associated L_{eq} limits delineated in Tables 1 and 2, for L_{dn} 70 and L_{dn} 65 respectively.

(c) The determination of the component sound level resulting from railroad facility operation and the demonstration of its dominance for paragraph (a) and (b), of this section, shall be made in accordance with the procedures of Subpart D.

Table 1.—Equivalent of 70 L_{dn} for 24 hours in A-weighted dB [7]

Cumulative hours	Day (15 hours)	Night (9 hours)
2	81	71
3	79	69
4	78	68
5	77	67
6	76	66
8	75	65
10	74	
12	73	
15	72	

Table 2.—Equivalent of 65 L_{dn} for 24 hours in A-weighted dB [7]

Cumulative hours	Day (15 hours)	Night (9 hours)
2	76	66
3	74	64
4	73	63
5	72	62
6	71	61
8	70	60
10	69	
12	68	
15	67	

[7] Values are rounded up to next dB.

Subpart C—Measurement Criteria for Specified Railroad Equipment/Facility Items

4. In Subpart C, § 201.22 is revised, and §§ 201.25 and 201–.26 are added to read as follows:

§ 201.22 Measurement instrumentation.

(a) A sound level meter or alternate sound level measurement system that meets, as a minimum, all the requirements of American National Standard S1.4—1971 [8] for a Type 1 instrument shall be used with the "fast" meter response characteristic. To insure Type 1 response, the manufacturer's instructions regarding mounting of the microphone and positioning of the observer shall be observed.

(b) In conducting the sound level measurements, the general requirements and procedures of American National Standard S1.3—1971 [8] shall be followed, except as specified otherwise herein.

(c) A microphone windscreen and an acoustic calibrator of the coupler type shall be used as recommended by: (1) the manufacturer of the sound level meter or (2) the manufacturer of the microphone.

§ 201.25 Acoustical environment, weather conditions and background noise during retarder, car coupling, and mechanical refrigeration car noise measurements.

(a) Measurement locations shall be selected such that the maximum sound level from railroad equipment is not increased by more than 1.0 dB by sounds reflected from any surface located behind the microphone. The phrase "located behind the microphone" means located beyond a line (or family of lines) drawn through the microphone and perpendicular to the line(s) between any point on the rail equipment and the microphone. (Area A in Figure 2). This acoustical condition shall be considered fulfilled if the following conditions exist:

(1) No substantially vertical surfaces of greater than 1.2 meters height (i.e. walls, cliffs, etc.) are located within an arc of 30 meters radius behind the microphone (Area B in Figure 2).

(2) No substantially vertical surfaces, placed so they reflect significant railroad sound to the microphone, which subtend an angle of greater than 20 degrees when measured from the microphone in either the vertical and most nearly horizontal planes, are located within an arc of 100 meters behind the microphone (Area C in Figure 2).

[8] American National Standards are available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018

(b) Miscellaneous objects may be located between the railroad equipment and microphone, except that all objects which break the line-of-sight of the equipment must be closer to the equipment than to the microphone; that is, along a line between the microphone and any point on the equipment, at the point of intersection with the object the distance to the equipment must be shorter than the distance to the microphone.

(c) Other railroad equipment may be located behind the equipment whose noise is being measured (Area D in Figure 2).

(d) The ground elevation at the microphone location shall be within plus 5 ft. or minus 10 ft. of the ground elevation of the source whose sound level is being measured.

(e) Measurements shall not be made during precipitation.

(f) Noise measurements may only be made if the average measured wind velocity is 12 mph (19.3 kph) or less, and the maximum wind gust velocity is less than 20 mph (33.2 kph).

§ 201.26 Procedures for the measurement of retarder, car coupling, and mechanical refrigeration car noise.

(a) *Refrigeration Car Test.* The microphone shall be positioned at any location 7 meters from the centerline of the refrigeration car track, and between 1.2 meters above the ground and the height corresponding to the top of the refrigeration car. The microphone shall be oriented with respect to the equipment in accordance with the manufacturer's recommendations. No observer shall stand between the microphone and the equipment being measured. The observer shall position the microphone in accordance with the manufacturer's instructions for Type 1 performance. The standard shall not be exceeded during any thirty second period after the throttle setting is established.

(b) *Car Coupling Test.* The microphone shall be positioned at a location 30 meters from the centerline of the coupling track, and at a height between 1.2 and 1.5 meters above the ground. The microphone shall be oriented with respect to the equipment in accordance with the manufacturer's recommendations. No observer shall stand between the microphone and the equipment being measured. The observer shall position the microphone in accordance with the manufacturer's instructions for Type 1 performance. The maximum sound level, L_{max} of individual car impacts shall be measured, and the average value (energy average) of these

maximum lev... $_{max}$, shall not exceed the standard ...otal number of measurements shall be at least ten.

(c) *Retarder Test.* The microphone shall be positioned at a location 30 meters from the centerline of the retarder track, and at a height between 1.2 and 1.5 meters above the ground. The microphone shall be oriented with respect to the equipment in accordance with the manufacturer's recommendations. No observer shall stand between the microphone and the equipment being measured. The observer shall position the microphone in accordance with the manufacturer's instructions for Type 1 performance. The maximum sound level, L_{max}, of individual retarder squeals shall be measured, and the average value (energy average) of these maximum levels L_{max} shall not exceed the standard.

Inert retarders shall be deemed to comply with the standard, and shall not be subjected to this test when engaged for the purpose of stopping rail cars.

The total number of measurements shall be at least ten.

(d) *Alternative Microphone Locations.* (1) If the criteria of § 201.26 do not permit measurements at the distances defined above, the measurement location may be adjusted within the distance limits listed in Table 1 below. When such an alternate location is selected, the measured maximum sound level shall be adusted by addition of the amount listed in Table 1 for the appropriate distance.

(2) The microphone shall be oriented with respect to the equipment in accordance with the manufacturer's recommendations. No observer shall stand between the microphone and the equipment being measured. The observer shall position the microphone in accordance with the manufacturer's instructions for Type 1 performance.

Table 3.—*Adjustment to L_{max} for Variable Measurement Distances*

Measurement Distance from Equipment, Meters		Adjustment to L_{max} dB
Retarders and car couplings	Refrigerator cars	
16.0–17.8		−5
17.9–20.0		−4
20.1–22.5		−3
22.6–25.2		−2
25.3–28.3		−1
28.4–31.7	6.7–7.3	0
31.8–35.6	7.4–8.2	1
35.7–39.9	8.3–9.2	2
40.0–44.8	9.3–10.4	3
44.9–50.3	10.5–11.7	4
50.4–56.4	11.8–13.1	5
	13.2–14.7	6
	14.8–16.5	7
	16.6–18.5	8
	18.6–20.8	9
	20.9–23.2	10

5. Subpart D is added to read as set forth below:

Subpart D—Measurement Criteria for Receiving Property

§ 201.30 Applicability and Purpose.

The following criteria are applicable to the measurement of the sound levels prescribed in the standards of Subpart B of this Part for receiving property.

§ 201.31 Measurement Instrumentation.

(a) An integrating sound level meter, or instrumentation system, that meets all of the requirements of American National Standard for Sound Level Meters S1.4–1971, Type 1 shall be used. The integrating sound level meter shall be capable of meeting the Type 1 tolerances for the sound level meter when used with an ideal integrator for the following functions (where applicable) and signals:

(1) *Sound Exposure Level:* For sinusoidal signals in its stated operating range with duration varying between 1 second and 3600 seconds, with the maximum sound exposure level of at least 135 dB re (20 micro pascals) squared and one second. An additional tolerance of ±1 dB is allowed for events which have a duration of between 100 milliseconds and 1 second.

(2) *Equivalent Sound Level:* For sinusoidal signals with sound levels varying between 45 and 125 dB, and frequencies between 200 and 1000 Hertz, and for any combination of sound levels whose durations range between 1 second and 3600 seconds for hourly equivalent sound level, except that the maximum hourly equivalent sound level need not exceed 100 dB.

(3) *Day-Night Sound Level:* For signals specified in paragraph (a)(2) of this section during daytime hours and for signals that are ten decibels lower during nighttime hours (0000 to 0700) and (2200 to 2400).

(b) A microphone windscreen and an acoustic calibrator of the coupler type shall be used as recommended by: (1) The manufacturer of the sound level meter or (2) the manufacturer of the microphone.

§ 201.32 Measurement Location and Weather Criteria.

(a) Enforcement measurements shall be conducted only at receiving property locations where the sound from railroad facility operations is dominant.

(b) No measurement shall be made within 10 meters distance from any substantially vertical reflecting surface that exceeds 1.2 meters in height, except for measurements on a residential dwelling measurement surface.

(c) No measurement shall be made when the average wind velocity during the period of measurement exceeds 12 mph (19.3 kph) or when the maximum wind gust velocity exceeds 20 mph (32.2 kph).

(d) No measurement shall be taken when precipitation (rain, snow, sleet, etc.) occurs for a period exceeding 20% of the measurement period, unless it can be demonstrated that the precipitation does not increase the sound level at the microphone.

§ 201.33 Procedures for Measurement.

(a) *General Approach.* The procedures for determination of the component sound level resulting from railroad facility operations and demonstration that it is the dominant sound component for the purpose of Subpart B of this part are as follows:

(1) Select a location for measurement;

(2) Determine the level, either hourly equivalent sound level, or day-night sound level, by measurement;

(3) Determine the railroad facility component sound level and demonstrate dominance by using either the procedures for clear dominance when it exists, or the procedure for dominance where the existence of clear dominance cannot be demonstrated.

(b) *Microphone Location.* The microphone shall be positioned at a height between 1.2 and 1.5 meters above the ground, except that on a residential dwelling measurement surface as exemplified in Figure 3 the microphone may be positioned at any height that is greater than 1.2 meters above the ground and less than the height of the uppermost interior ceiling immediately adjacent to the location on the measurement surface, or 7 meters, whichever is less. The location shall be selected where it is expected that dominance can be demonstrated, and the conditions of measurement shall be selectesd such that the criteria of Sec. 201.32 are satisfied.

(c) *Determine the Measured Level.* The hourly equivalent sound level in any daytime or nighttime hour, or the day-night sound level in any continuous

24-hour period, as desired, shall be measured.

(d) *Rail Facility Component Hourly Equivalent Sound Level or Day-Night Sound Level When it is the Clearly Dominant Sound.* Clear dominance exists when the measured hourly equivalent or day-night sound level exceeds the component hourly equivalent or day-night sound level from non-railroad facility and through train operations by 6 dB or more. When clear dominance is shown to exist, the rail facility component hourly equivalent sound level or day-night sound level for the purpose of Subpart B shall be determined by subtracting one decibel from the measured level. For this purpose, the following procedures shall be used to estimate the non-railroad facility component hourly equivalent or day-night sound level:

(1) The component hourly equivalent sound level or day-night sound level resulting from non-railroad and through train operations shall be calculated by summing on an energy basis the component sound levels from each of the significant source components present. For this purpose a source is considered significant if its component sound level is within 12 dB of the measured sound level. Methods for determining the component sound levels for several types of sources are given in the following:

(i) For a measurement location in a residential neighborhood, in which the sound from non-neighborhood sources, such as major streets or highways, industrial, commercial, or public establishment, aircraft, construction, etc., is not identifiable, the residential neighborhood component day-night sound level shall be estimated to be equal to or less than the quantity [22 + 10 log (population density)]. The population density shall be determined by dividing the population of the census tract which contains the measurement location, by the area in square miles of the residential portion of the census tract. The residential neighborhood component hourly equivalent sound level for daytime hours shall be estimated by adding 1 dB to the estimated day-night sound level, and for nighttime hours by subtracting 6 dB from the estimated day-night sound level.

(ii) For a measurement location where a significant source of noise is civil aircraft, the aircraft component hourly equivalent sound level or day-night sound level shall be estimated using the procedures contained in the EPA document, "Calculation of Day-Night Levels Resulting From Civil Aircraft Operations," EPA 550/9–77–450 (January 1977). In using these procedures, the number of aircraft operations on flight tracks which affect the noise at the community location shall be that occurring during the period of measurements.

(iii) For a measurement location where a significant source of noise is the motor vehicle traffic on a nearby roadway, the traffic component hourly equivalent sound level or day-night sound level shall be estimated using the procedures contained in the Federal Highway Administration document, "User Manual: TSC Highway Noise Prediction Code: Mod 04," FHWA–RD–77–18 (January 1977). In using these procedures, the traffic flow characteristics during each hour of the measurement day shall be used to estimate the hourly equivalent sound levels throughout the day; these shall be weighted for time of day and summed on an energy basis to obtain the traffic component day-night sound level.

(iv) For a measurement location where a significant source of noise is through trains which move continuously through a railroad facility during the measurement period the through train component hourly equivalent sound level or day-night sound level shall be measured during the period.

Alternatively, if through trains operate on a regular basis, the through train component hourly equivalent and day-night sound level for these trains may be computed, assuming the scheduled times for purposes of nighttime weighting (unless the actual times are known), from the average sound exposure level measured for through trains at the location. The average sound exposure level shall be determined from an energy average of the measured sound exposure levels. For computation, the total number of measurements shall be at least five through trains.

(v) For a measurement location where a significant source of noise is other than the above, the component hourly equivalent sound level or day-night sound level for each significant source shall be determined from measurements.

(2) For any measurement at a receiving property location the demonstration of clear dominance for the measured hourly equivalent sound level may be based on a comparison of the value of the measured hourly equivalent sound level obtained in an hour in which operations in the railroad facility were judged to dominate the sound with the value of an hourly equivalent sound level obtained in a prior or subsequent period, or a combination of both, in which the sound from operations in the railroad facility were judged to be less dominant, with both of these values measured within a total elapsed time not exceeding four hours. When the difference between the former and latter values of measured hourly equivalent sound level equals or exceeds 6 dB, clear dominance is demonstrated.

(e) *Rail Facility Component Hourly Equivalent or Day-Night Sound Level and Dominance when Clear Dominance cannot be Demonstrated.* Dominance exists when the measured hourly equivalent or day-night sound level exceeds the rail facility component level by 3 dB or less. Dominance of the rail facility component day-night sound level shall be demonstrated for the purpose of subpart B of these regulations by showing that the calculated rail facility component sound level is zero to 6 dB above the non-railroad facility component sound level, and that the level calculated on an energy basis from these two quantities is within 2 dB of the measured sound level less the through trains component sound level. For this purpose the non-railroad facility component sound level and the through train component sound level may be determined by the procedures in Sec. 201.33d, and the rail facility component level determined by the following, or functional equivalent thereof:

(1) Calculate the rail facility component partial day-night sound level from the values of rail facility component equivalent sound level measured under conditions of clear dominance, Sec. 201.33d above.

(2) Determine the energy average sound exposure level for each noise source which contributes significantly to the noise at the measurement location. For this determination, the average value for each type of source should be based on at least five measurements or a number equal to the range of measured levels in decibels. Compute the rail facility component sound level from the energy average sound exposure levels for each significant source, type, the number of such source types operating per hour or day (by time of day), and the distance between source and receiver

[FRL 1053–8; Docket No. ONAC 79–01]
[FR Doc. 79–11707 Filed 4–16–79; 8:45 am]
BILLING CODE 6560–01–M

federal register

Tuesday
April 17, 1979

Part IV

Department of Energy

Economic Regulatory Administration

Proposed Rule on Annual Reports From States and Nonregulated Utilities on Their Progress in Carrying Out Titles I and II of the Public Utility Regulatory Policies Act of 1978

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 463]

Proposed Rule on Annual Reports From States and Nonregulated Utilities on Their Progress in Carrying Out Titles I and III of the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has been delegated authority by the Secretary of DOE to set forth the requirements for submission of reports to DOE by State regulatory authorities and large nonregulated electric and gas utilities. This proposed rule would implement the provisions of sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA, or the Act) which require annual reports on progress in carrying out certain duties and responsibilities regarding the policy standards established by Titles I and III of PURPA. The reports must include a summary of the determinations made and actions taken with respect to each standard for each covered utility.

DATES: Comments by June 18, 1979. Requests to speak at public hearings by May 2, 1979, 4:30 p.m. Hearing dates: Washington, D.C. hearing: May 10, 1979, 1:30 p.m.; Denver, Colorado hearing: May 17, 1979, 1:30 p.m.

ADDRESSES: All comments to: Department of Energy, Docket Control Center, Docket No. ERA– R–79–19, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Requests to speak: Washington, D.C. hearing—Docket Control Center, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461 (Telephone (202) 254–5201); Denver, Colorado hearing—Department of Energy, Attention: Dale Eriksen, 1075 S. Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80202 (Telephone (303) 234–2420). Hearing locations: Washington, D.C. hearing—Room 2105, 2000 M Street, N.W., Washington, D.C. 20461; Denver, Colorado hearing—Room 300 B&C, Auraria Student Center, 9th Street between Lawrence and Larimar, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

William G. Smith, Office of Utility Systems, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, N.W. (Vanguard 537), Washington, D.C. 20461, (202) 254–9700.

Robert C. Gillette (Hearing Procedures), Office of Public Hearing Management, U.S. Department of Energy, 2000 M Street, N.W., Room 2222, Washington, D.C. 20461, (202) 254–5201.

William L. Webb, Office of Public Information, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, (202) 634–2170.

Cameron R. Graham, Office of General Counsel, Assistant General Counsel for Regulatory Intervention, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room OG087, Forrestal Building, Washington, D.C. 20585, (202) 252–6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 9, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 as one part of the National Energy Act. PURPA establishes three Federal purposes relating to: Conservation of energy supplied by utilities; the optimization of the efficiency of use of facilities and resources by utlities; and equitable rates to utility consumers.

Sections 111 and 113 of PURPA Title I establish 11 Federal policy standards for large electric utilities (those whose annual retail sales exceed 500 million kilowatt-hours in any calendar year beginning with 1976 and ending two years before the reporting year.) Six standards relate to rate design, while the other five relate to a variety of separate regulatory matters. Section 115 sets forth certain special rules regarding these standards.

Section 303 of PURPA Title III establishes two Federal policy standards for large gas utilities (those whose annual retail sales exceed 10 billion cubic feet in any calendar year beginning with 1976 and ending two years before the reporting year.) Both standards relate to regulatory matters. Section 304 sets forth special rules regarding these standards.

Each State regulatory authority with ratemaking responsibility for a covered utility (as well as each covered nonregulated utility) is required by PURPA to consider each of the Federal standards for each covered utility within a specified period of time. With regard to the six rate design standards established by Title I of the Act, consideration must start by November 9, 1980, and be completed by November 9, 1981. If consideration is not completed by November 9, 1981, the rate design standards must be considered in the next regular rate case. With regard to the five regulatory standards established by Title I of the Act, as well as the two regulatory standards established by Title III of the Act, consideration must be completed by November 9, 1980.

Each State regulatory authority and covered nonregulated utility is required to report to DOE by November 9, 1979, and annually thereafter for ten years, its consideration of the standards in a manner prescribed by DOE. The purpose of this notice is to propose, by rule, the form and manner in which the reports shall be submitted. ERA has been delegated authority by the Secretary of DOE for promulgating this rule.

Environmental Impact

After reviewing the rule pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), ERA has determined that the proposed action does not constitute a Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared and a finding of no significant impact to that effect is hereby issued.

Regulatory Impact

ERA has determined that the publication of this rule does constitute a significant regulatory action. Preparation of a regulatory analysis pursuant to Executive Order 12044 is not required. This conclusion is based on the fact that the rule will not have a major impact. That is, it is not likely to impose a gross economic annual cost of $100 million or more; nor is the rule likely to impose a major increase in costs or prices for individual industries, levels of government, geographic regions, or demographic groups.

Urban Impact Analysis

This proposed rulemaking has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the proposed regulations are not likely to have a major impact, DOE has determined that no community and urban impact analysis of this proposed rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

Specific Comments Requested

ERA is issuing this proposed rule with the desire of focusing public attention and discussion on ERA's proposal for implementing sections 116 and 309 of the Act. The public is encouraged to comment not only on those issues enumerated below, but on all aspects of this rule. ERA will consider all comments before reaching any final decisions.

1. *Form of the Report.* The Act gives ERA the prerogative to specify the manner in which the information regarding the consideration and determination of the standards established in sections 111(d), 113(b) and 303(b) of PURPA is to be collected. ERA has attempted to minimize the reporting burden by proposing the use of a standard form and, where possible, questions that can be answered by a "yes" or "no". Comments specifically addressing the content and format of the report are requested.

2. *Reporting Year Designation.* In order to allow sufficient time for preparing the reports, ERA proposes October 1 to September 30 as the reporting year with reports due to be submitted by November 1. For the report due November 1, 1979, the reporting year would be November 9, 1978 (the date of PURPA enactment) to September 30, 1979. For each subsequent report, the reporting year would be October 1 of the previous year to September 30 of the year in which the report is due. ERA requests comments regarding the designation of the reporting year. Such comments should reflect consideration of the submission date for the report (November 1 of each year), the time required for preparation of the report, and the other activities of the State regulatory authorities and the nonregulated utilities.

3. *Information Reporting Requirements.* ERA has attempted to minimize duplication between the information requested in this report and any other reporting requirements imposed on the State regulatory authorities and nonregulated utilities by DOE. In furtherance of that objective, as well as the objective of ensuring maximum clarity and consistency of the data submitted, ERA requests comments regarding the addition, omission, combining, or referencing of information required in this report. With particular respect to electric utility cost-of-service data, ERA has tried to confine its requests to information on the application of such data in the consideration and determination of the standards specifed in sections 111(d), 113(b), and 303(b) of the Act. A separate rule requiring individual utilities to gather and report such data, in far greater detail, is being promulgated by the Federal Energy Regulatory Commission (FERC) pursuant to section 133 of PURPA. The public is requested to comment on the extent to which this ERA rule should cover the State regulatory authority's (or covered nonregulated utility's) involvement, if any, in complying with the FERC's cost-of-service rule.

Public Hearing and Comment Procedures

1. *Written Comments.* The public is invited to participate in this proceeding by submitting information, views or arguments with respect to the proposals set forth in this Notice. Comments should be submitted by 4:30 p.m., e.s.t., June 18, 1979, to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation: "PURPA Annual Reports, Docket No. ERA–R–79–19." Five copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, GA–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, and the ERA Office of Public Information, Room B–110, 2000 M Street, NW., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

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

2. *Public Hearings.*

a. *Procedures for request to make oral presentation.* The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" sections of this Notice. Any person who has an interest in this proposed rule or represents a person, group or class of persons that has an interest, may make a written request for an opportunity to speak at the public hearings. Requests to speak must be sent to the address shown in the "Addresses" section and be received by May 2, 1979.

A request to speak at a hearing should briefly describe the interest and, if applicable, state why the requester is a proper representative of a group or class of persons having such interest. In addition, this request should give a concise summary of the proposed oral presentation and a phone number where DOE may contact the speaker before the applicable hearing. All persons participating in the hearing will be so notified on or before May 4, 1979, for the Washington, D.C. hearing, and May 5, 1979 for the Denver, Colorado meeting. Speakers who wish to have material distributed at the Washington, D.C. hearing should submit 100 copies of their hearing testimony for receipt by 4:30 p.m. on May 9, 1979 to Public Hearing Management, U.S. Department of Energy, Room 2214, 2000 M Street, NW., Washington, D.C. 20461. One hundred (100) distribution copies of written testimony should be submitted for the Denver, Colorado hearing at the hearing location specified in the "ADDRESSES" section of this Notice on the day of the hearing.

b. *Conduct of the hearing.* ERA reserves the right to schedule participants' presentations and to establish the procedures governing the conduct of the hearing. ERA may limit the length of each presentation, based on the number of persons requesting to be heard. ERA encourages groups that have similar interests to choose one appropriate spokesperson qualified to represent the views of the group.

ERA will designate officials to preside at the hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement may be given the opportunity, if time permits, and if he so desires, to make a rebuttal statement. Rebuttal statements, if allowed, will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to have a question asked at the hearing must submit it in writing to the presiding officer on the day of the hearing. The presiding officer will determine whether time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

ERA will have a transcript made of the hearing, and ERA will retain the entire record of the hearing, including the transcript, and make it available for inspection at the DOE Freedom of Information Office, Room GA–152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 and the ERA Office of Public Information, Room B–110, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A copy of the

transcript may be purchased from the reporter.

c. *Other relevant hearings.* In addition to holding hearings on the PURPA Annual Reports, ERA will be holding public hearings on two other related PURPA rules on two consecutive days. Public hearings on the Grants for Offices of Consumer Services Program will be held in Washington, D.C. on May 8, 1979, 11:00 a.m. to 7:00 p.m., and in Denver, Colorado on May 15, 1979, 11:00 a.m. to 7:00 p.m.

Public hearings on Financial Assistance Programs for State Utility Regulatory Commissions and Eligible Nonregulated Electric Utilities will be held in Washington, D.C. on May 9, 1979, 9:30 a.m. and in Denver, Colorado on May 16, 1979, 9:30 a.m.

Public hearings regarding Federal voluntary guidelines for PURPA, intervention and technical assistance will be held in Washington, D.C. on May 10, 1979, 9:30 a.m. to 12:30 p.m., and in Denver, Colorado on May 17, 1979, 9:30 a.m. to 12:30 p.m.

In consideration of the foregoing, the Department of Energy proposes to add a new Part 463 to Chapter II, Title 10 of Code of Federal Regulations to read as set forth below.

Issued in Washington, D.C. on April 10, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Chapter II of Title 10, Code of Federal Regulations Is Amended by Establishing Part 463.

PART 463—ANNUAL REPORTS FROM STATES AND NONREGULATED UTILITIES ON PROGRESS IN CONSIDERING AND IMPLEMENTING RATEMAKING STANDARDS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

Subpart A—General Purpose and Scope; Background; Definitions

Sec.

463.10 General purpose and scope.
463.11 Background: Federal purposes.
463.12 Background: Standards for electric utilities.
463.13 Background: Standards for gas utilities.
463.14 Background: Consideration of the standards.
463.15 Background: Implementation.
463.16 Background: Substantial conformance.
463.17 Definitions.

Subpart B—General Requirements: PURPA Annual Report on Electric Utilities

463.21 Scope.
463.22 Schedule.
463.23 Address; number of copies.
463.24 Coverage.
463.25 Presentation of information.

Subpart C—General Requirements: PURPA Annual Report on Gas Utilities

463.31 Scope.
463.32 Schedule.
463.33 Address; number of copies.
463.34 Coverage.
463.35 Presentation of information.
463.36 Annual report on prohibition on sale and direct industrial use of natural gas for outdoor lighting.

Appendix A—PURPA Annual Report on Electric Utilities.

Appendix B—PURPA Annual Report on Gas Utilities.

Authority: Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617 (16 U.S.C. 2601 et seq) Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 et seq)

Subpart A—General Purpose and Scope; Background; Definitions

463.10 General purpose and scope.

(a) The purpose of ths rule is to implement sections 116 (of Title I) and 309 (of Title III) of Pub. L. 95-617, the Public Utility Regulatory Policies Act of 1978 (PURPA, or the Act). These sections of PURPA require State regulatory authorities and large electric and gas nonregulated utilities to report annually to DOE on progress in considering and implementing certain standards established by PURPA. ERA has been delegated authority, by the Secretary of DOE, to promulgate this rule.

(b) There are two reports required to be submitted to ERA by this rule: The "PURPA Annual Report on Elective Utilities," and the "PURPA Annual Report on Gas Utilities." Subparts B and C specify, respectively, the report content and the terms and conditions with which each State regulatory authority and nonregulated electric and gas utility must comply in preparing and submitting, to ERA, the reports. Appendices A and B specify, respectively, the forms to be utilized in submitting the reports to ERA.

(c) Subpart A consists of this section, entitled "General purpose and scope," and §§ 463.11 through 463.16, which provide background information. Sections 463.11 through 463.16 of this rule only summarize the statutory provisions of PURPA and do not, themselves, have the force of law. Section 463.11, "Background: Federal purposes," summarizes the three purposes of PURPA. Section 463.12, "Background: standards for electric utilities," summarizes the six rate design standards and five regulatory standards established by Title I of PURPA. These standards represent the focal point of the PURPA Annual Report on Electric Utilities. Section 463.13, "Background: standards for gas utilities," summarizes the two regulatory standards established by Title III of PURPA. These standards represent the focal point of the PURPA Annual Report on Gas Utilities. Sections 463.14, 463.15, and 463.16 entitled respectively "Background: Consideration of the standards," "Background: implementation," and "Background: substantial conformance," summarize the responsibilities, specified in Titles I and III of PURPA, encumbent upon each State regulatory authority (with respect to each covered electric and gas utility over which it has ratemaking authority) and each covered non-regulated utility regarding consideration of the standards for electric and gas utilities. Section 463.17 sets forth the definitions applicable to this rule.

(d) Subpart B spells out the report content and the terms and conditions with which each State regulatory authority and nonregulated electric utility must comply in preparing and submitting to ERA and PURPA Annual Report on Electric Utilities. Section 463.21 outlines the organization of Subpart B.

(e) Subpart C spells out the report content and the terms and conditions with which each State regulatory authority and nonregulated gas utility must comply in preparing and submitting to ERA the PURPA Annual Report on Gas Utilities. Section 463.31 outlines the organization of Subpart C.

(f) Appendices A and B are, respectively, the forms to be used for submitting to ERA the PURPA Annual Report on Electric Utilities and the PURPA Annual Report on Gas Utilities.

§ 463.11 Background: Federal purposes.

Title I (section 101) and Title III (section 301) of PURPA establish three Federal "purposes" that supplement otherwise applicable State law. These purposes relate to:

(a) Conservation of energy supplied by electric and gas utilities;

(b) The optimization of the efficiency of use of facilities and resources by electric utilities and gas utility systems; and

(c) Equitable rates to electric and gas consumers.

§ 463.12 Background: Standards for electric utilities.

Title I (sections 111 and 113) of PURPA establishes 11 "Federal standards" for covered electric utilities. Section 115(a) sets forth certain special rules regarding these standards. the first

six standards (paragraphs (a) through (f) of this section) relate to rate design, while the other five standards (paragraphs (g) through (k) of this section) relate to a variety of separate regulatory matters. The 11 standards specified in detail in the Act, pertain to:

(a) Basing rates upon the cost-of-service, using methods that take marginal costs into account;

(b) Eliminating declining block rates;

(c) Establishing time-of-day rates;

(d) Establishing seasonal rates;

(e) Offering interruptible rates to commercial and industrial consumers;

(f) Offering load management techniques to all consumers;

(g) Prohibiting or restricting master metering for new buildings;

(h) Prohibiting or restricting automatic adjustment clauses;

(i) Periodically informing utility consumers of applicable rate schedules and individual annual energy consumption;

(j) Prohibiting termination of service to consumers under certain conditions; and

(k) Requiring that certain utility advertising be charged only to utility owners.

§ 463.13 Background: Standards for gas utilities.

Title III (sections 303 and 304) of PURPA establishes two "Federal standards" for the covered gas utilities relating to regulatory matters. Section 304 sets forth certain special rules regarding these standards. The two standards, specified in detail in the Act, pertain to:

(a) Prohibiting termination of service to consumers under certain conditions; and

(b) Requiring that certain utility advertising be charged only to utility owners.

§ 463.14 Background: Consideration of the standards.

(a) Each State regulatory authority with ratemaking authority for a covered utility (as well as each covered nonregulated utility) is required by PURPA to consider each of the Federal standards as summarized in §§ 463.12 and 463.13 for such utility within a specified period of time. In regard to the six rate design standards as summarized in paragraphs (a) through (f) of § 463.12, consideration must start by November 9, 1980, and be completed by November 9, 1981. If consideration is not completed by November 9, 1981, the rate design standards must be considered in the next regular rate case. In regard to the five regulatory standards as summarized in paragraphs (g) through (k) of § 463.12, as well as the two gas standards as summarized in § 463.13, consideration must be completed by November 9, 1980.

(b) Each Federal standard is to be considered within the context of otherwise applicable State law, as supplemented by the three purposes of PURPA summarized in § 463.11. In addition, consideration of the standards as summarized in paragraphs (a) through (k) of § 463.12 and § 463.13 must provide for:

(1) Public notice and hearing;

(2) Opportunity for utility, consumer, and DOE participation and access to information (including acquisition of transcripts at reproduction cost);

(3) Evidence and findings; and

(4) A written determination, based on the evidence and findings and made available to the public.

(c) In addition, PURPA section 122 entitles persons who would not otherwise be adequately represented, whose representation is necessary for a fair determination, and who could not otherwise afford to effectively participate, to receive compensation for their intervention costs under certain circumstances.

§ 463.15 Background: Implementation.

(a) *Rate design standards.* With respect to the rate design standards as summarized in paragraphs (a) through (f) of § 463.12, the State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility must, to the extent consistent with otherwise applicable law:

(1) Implement any such standard which it has considered in accordance with such paragraphs and determined to be appropriate to carry out the purposes of the Act, as summarized in § 463.11; or

(2) Decline to implement such standards with the reasons for such declination stated in writing and made available to the public.

(b) *Regulatory standards.* With respect to the regulatory standards as summarized in paragraphs (g) through (k) of § 463.12 and § 463.13, the State regulatory authority (with respect to each electric or gas utility for which it has ratemaking authority) or nonregulated electric or gas utility shall adopt such standards, as applicable, if, and to the extent such authority or nonregulated utility determines, that such adoption is:

(1) Appropriate to carry out the purposes of Title I and Title III of the Act;

(2) Otherwise appropriate; and

(3) Consistent with otherwise applicable State law. If the State regulatory authority or nonregulated electric or gas utility determines not to adopt any of the regulatory standards, the reasons for not adopting must be in writing and made available to the public.

§ 463.16 Background: Substantial conformance (grandfathering).

(a) With respect to the consideration of any standard for any covered utility, a proceeding shall be treated as complying with the requirements for consideration of the standards as summarized in § 463.14 if:

(1) Such proceeding was initiated prior to November 9, 1978; and

(2) Such proceeding substantially conforms to the PURPA consideration requirements as summarized in section 463.14 of this part.

(b) A State regulatory authority or individual non-regulated utility has the prerogative of determining that a prior proceeding substantially conformed to the PURPA consideration requirements as summarized in § 463.14. Such a determination is reviewable in State court under otherwise applicable State law, as supplemented by the three purposes of PURPA summarized in § 463.11. DOE is not authorized by PURPA to render the governing legal determination on issues of substantial conformance.

§ 463.17 Definitions.

Unless otherwise expressly provided, for the purposes of this rule—

(a) The term "class" means, with respect to electric and gas consumers, any group of such consumers who have similar characteristics of electric or gas energy use, respectively.

(b) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(c) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(d) The term "Federal agency" means an executive agency (as defined in section 105 of the United States Code).

(e) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(f) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(g) The term "nonregulated electric utility" means any electric utility with respect to which neither TVA nor any

State regulatory authority has ratemaking authority.

(h) The term "non-regulated gas utility" means any gas utility with respect to which no State regulatory authority has ratemaking authority.

(i) The term "PURPA Annual Report on Electric Utilities" means the report submitted to ERA, by each State regulatory authority (with respect to each covered State regulated electric utility for which it has ratemaking authority), and each covered nonregulated electric utility as specified in Subpart B of this part and as set forth in Appendix A.

(j) The term "PURPA Annual Report on Gas Utilities" means the report submitted to ERA, by each State regulatory authority (with respect to each covered State regulated gas utility for which it has ratemaking authority), and each covered nonregulated gas utility as specified in Subpart C of this part and as set forth in Appendix B.

(k) The term "rate" means:

(1) Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of electric energy by an electric utility to an electric consumer or the sale of natural gas to a gas consumer;

(2) Any rule, regulation, or practice respecting any such rate, charge, or classification; and

(3) Any contract pertaining to the sale of electric energy to an electric consumer or the sale of natural gas to a gas consumer.

(l) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(m) The term "sale" means a transfer to a purchaser for consideration and:

(1) when used with respect to electric energy, includes any exchange of electric energy; or

(2) when used with respect to natural gas, includes any exchange of natural gas.

(n) The term "State" means a State, the District of Columbia, and Puerto Rico.

(o) The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

(p) The term "State regulated electric utility" means any electric utility with respect to which a State regulatory authority has ratemaking authority.

(q) The term "State regulated gas utility" means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(r) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to:

(1) The sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority; or

(2) The sale of natural gas by any gas utility (other than by such State agency).

Subpart B—General Requirements: PURPA Annual Report on Electric Utilities

§ 463.21 Scope.

(a) This subpart sets forth the general requirements which shall be complied with by each State regulatory authority (with respect to each covered State regulated electric utility for which it has ratemaking authority) and each covered non-regulated electric utility in completing the "PURPA Annual Report on Electric Utilities" as set forth in Appendix A of this rule.

(b) Section 463.22 sets forth the schedule for submission of the PURPA Annual Report on Electric Utilities. Section 463.23 states the number of report copies to be sent and where they should be sent. Section 463.24 sets forth the criteria for determining which electric utilities are covered. General instructions for the presentation of information in the report are set forth in § 463.25.

§ 463.22 Schedule.

(a) *Due date.* Not later than November 1, 1979, and annually thereafter for ten years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each covered nonregulated electric utility shall submit a PURPA Annual Report on Electric Utilities as set forth in Appendix A of this rule, to ERA.

(b) *Reporting period.* The reporting period for the first PURPA Annual Report on Electic Utilities shall be November 9, 1978 to September 30, 1979. For each subsequent report, the reporting period shall be October 1 of the previous year to September 30 of the year in which the report is due.

§ 463.23 Address; number of copies.

Each reporting entity shall send the original and two copies of the PURPA Annual Report on Electric Utilities to the following address:

PURPA Annual Report on Electric Utilities, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street NW. (Vanguard 538A), Washington, D.C. 20461.

§ 463.24 Coverage.

(a) *General.* This subpart applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. For example, in the case of the first report (due November 1, 1979, the applicable years for determining the threshold are 1976 and 1977.

(b) *Exclusion of wholesale sales.* The requirements of this subpart do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

(c) *List of covered utilities.* Before the beginning of each calendar year, ERA will publish a list pursuant to section 102(c) of PURPA, identifying each electric utility to which this subpart applies. For the first report, the 1979 list should be used and can be found in the **Federal Register** (March 21, 1979, V. 44, No. 56, Part IV, pp. 17448–17457). The inclusion or exclusion of any utility on the list does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA or this part.

§ 463.25 Presentation of information.

Information contained in the PURPA Annual Report on Electric Utilities shall be presented consistent with the format set forth in Appendix A of this rule. The information to be provided on a utility-by-utility basis shall be presented in alphabetical order of utility. All information shall be provided in a clear and concise manner. Any supplementary information shall be referenced in the applicable reporting section. ERA reserves the right to request such supplementary information from the State regulatory authority or covered nonregulated utility as may be needed to fully understand the report, although each reporting entity shall make a reasonable initial effort to comply with the intent of this part.

Subpart C—General Requirements: PURPA Annual Report on Gas Utilities

§ 463.31 Scope.

(a) This subpart sets forth the general requirements which shall be complied with by each State regulatory authority (with respect to each covered State regulated gas utility for which it has ratemaking authority) and each covered

nonregulated gas utility in completing the "PURPA Annual Report on Gas Utilities" set forth in Appendix B of this rule.

(b) Section 463.32 sets forth the schedule for submission of the PURPA Annual Report on Gas Utilities. Section 463.33 states the number of report copies to be sent and where they should be sent. Section 463.34 sets forth the criteria for determining which gas utilities are covered. General instructions for the presentation of information in the report are set forth in § 463.35.

§ 463.32 Schedule.

(a) *Due date.* Not later than November 1, 1979, and annually thereafter for ten years, each State regulatory authority (with respect to each State regulated gas utility for which it has ratemaking authority), and each covered nonregulated gas utility shall submit a PURPA Annual report on Gas Utilities, as set forth in Appendix B of this rule.

(b) *Reporting period.* The reporting period for the first PURPA Annual Report on Gas Utilities shall be November 9, 1978 to September 30, 1979. For each subsequent report, the reporting period shall be October 1 of the previous year to September 30 of the year in which the report is due.

§ 463.33 Address, number of copies.

Each reporting entity shall send the original and two copies of the PURPA Annual Report on Gas Utilities to the following address:

PURPA Annual Report on GAs Utilities, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW. (Vanguard 538A), Washington, D.C. 20461.

§ 463.34 Coverage.

(a) *General.* This subpart applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. For example, in the case of the first report (due November 1, 1979), the applicable years for determining the threshold are 1976 and 1977.

(b) *Exclusion of wholesale sales.* The requirements of this subpart do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(c) *List of covered utilities.* Before the beginning of each calendar year, ERA will publish a list pursuant to section 301(d) of PURPA, identifying each gas utility to which this subpart applies. For the first report, the 1979 list should be used and can be found in the **Federal Register** (March 21, 1979, V.44, No. 56, Part IV, pp. 17448–17457). The inclusion or exclusion of any utility on the list does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA or this part.

§ 463.35 Presentation of information.

Information contained in the PURPA Annual Report on Gas Utilities shall be presented in the format set forth in Appendix B of this rule. The information to be provided on a utility-by-utility basis shall be presented in alphabetical order of utility. All information shall be provided in a clear and concise manner. Any supplementary information shall be referenced in the applicable reporting section. ERA reserves the right to request such supplementary information from the State regulatory authority or covered nonregulated utility as may be needed to fully understand the report, although each reporting entity shall make a reasonable initial effort to comply with the intent of this part.

§ 463.36 Annual Report on Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting.

The appropriate State regulatory authority may submit to ERA, with the PURPA Annual Report on Gas Utilities, the Annual Report on the Prohibition on Sale and Direct Industrial use of Natural Gas for Outdoor Lighting, as required pursuant to section 402 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620) and applicable regulations (10 CFR Part 516). The Annual Report on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting shall set forth:

(a) Current estimated annual natural gas consumption within the State attributable to outdoor lighting;

(b) A current set of rules and regulations establishing any prohibitions against the use of outdoor natural gas lighting, for enforcing the prohibitions, and for granting or denying exemptions to the prohibitions; and

(c) A summary of orders granted and denied during the year, by category of exemption, and including the rationale for such grant or denial.

BILLING CODE 6450-01-M

E.A-166A
(3-79)

APPENDIX A - PURPA ANNUAL REPORT
ON ELECTRIC UTILITIES

Form Approved
OMB No._____

U. S. DEPARTMENT OF ENERGY

Economic Regulatory Administration

Instructions for Filing ERA-166A
PURPA ANNUAL REPORT ON ELECTRIC UTILITIES

General Information and Instructions

I. Purpose [Reserved]

II. Completion of Application

A. Schedule 1 shall be completed only once by the State regulatory authority or covered nonregulated utility.

B. For item 4.0 in Schedule 1, fill in the chart by placing the name of each covered utility in the vertical column under utility #1, utility #2, etc. Also insert the single number which best represents the chronological status of the consideration and determination process (as of the end of the reporting period) in the appropriate column. Enter this number into the generic (G) or individual hearing (I) column, as appropriate. If the consideration process has not yet begun, enter the status (#1) in the (G) column.

Chronological Status

1. "Consideration process" has not yet begun.
2. Notice of prehearing or hearing has been issued.
3. Prehearing or hearing is in progress.
4. Decision on "appropriateness" is pending.
5. Written determination to adopt the standard has been issued.
6. Written determination not to adopt the standard has been issued.
7. Judicial review of determination is pending.
8. Standard has been implemented.

C. Schedules 2 through 12 (including questions 1.0 through 17.0 which are common to each standard) shall be completed by each State regulatory authority or covered nonregulated utility as indicated on the schedule. In the case of a State regulatory authority, Schedules 2 through 12 shall be completed for each covered electric utility with respect to which that authority has ratemaking authority.

ERA-166A
(3-79)

Form Approved
OMB No._____

General Information and Instructions (con't)

D. On schedules 2 through 12, the State regulatory authority or covered nonregulated utility shall check (✓) "Considered - Yes" or "Considered - No" for every element of each question beginning with 18.0 that has a space provided for an answer.

E. When answering a question with a response "other, specify" summarize the response in the space provided, if possible.

F. Use additional pages and attachments as needed to provide supplemental data to any schedule. When providing supplemental data, attach it as a numbered appendix, consecutively numbered starting with 1, and indicate the appendix number in the appropriate space on the schedule.

G. Enter wherever requested, the date as two digits. For example, enter May 6. 1975 as Ø5 Ø6 75.

H. If further information is needed, call William G. Smith of the Economic Regulatory Administration at (202) 254-9700.

III. Where to Submit Application [Reserved]

IV. When to Submit [Reserved]

V. Reporting Period [Reserved]

ERA-166A
(3-79)

Form Approved
OMB No_____

Definitions

A - Class - [Reserved]
B - Covered electric utility - [Reserved]
C - Covered gas utility - [Reserved]
D - Electric consumer - [Reserved]
E - Federal agency - [Reserved]
F - Gas consumer - [Reserved]
G - Nonregulated electric utility - [Reserved]
H - Nonregulated gas utility - [Reserved]
I - Rate - [Reserved]
J - Ratemaking authority - [Reserved]
K - Sale - [Reserved]
L - State - [Reserved]
M - State agency - [Reserved]
N - State regulated electric utility - [Reserved]
O - State regulated gas utility - [Reserved]
P - State regulatory authority - [Reserved]

Specific Instructions

Schedule 1
State Regulatory Authority
(or covered nonregulated utility)
Information

Item No.	Instruction
	Schedules 2 - 12:
	2 - Advertising Standard
	3 - Termination of Service Standard
	4 - Declining Block Rates Standard
	5 - Seasonal Rates Standard
	6 - Interruptible Rates Standard
	7 - Load Management Techniques Standard
	8 - Cost of Service Standard
	9 - Automatic Adjustment Clause Standard
	10 - Time of Day Rates Standard
	11 - Information to Consumers Standard
	12 - Master Metering Standard

ERA-166A
(3-79)

Form Approved
OMB No.

U. S. DEPARTMENT OF ENERGY
Economic Regulatory Administration
Washington, D. C. 20461

PURPA ANNUAL REPORT ON ELECTRIC UTILITIES

SCHEDULE 1
State Regulatory Authority (or Covered Nonregulated Utility) Information

This report is mandatory under P.L. 95-617 (PURPA Section 116)

1.0 IDENTIFICATION DATA

1.1 What is the date of submission of this report? Month Day Year

1.2 What is the period covered by this report? Month Day Year
From:
Month Day Year
To:

1.3 What is the name and address of the State regulatory authority (or covered nonregulated utility)?
Name
Street
City State Zip Code

1.4 What is the name, title, address and phone number of the person(s) responsible for the preparation of this form?
(1)
Name Title
Street
City State Zip Code
( )
Phone Number
(2)
Name Title
Street
City State Zip Code
( )
Phone Number

ERA-166A
(3-79)

SCHEDULE 1

Form Approved
OMB No.

1.0 IDENTIFICATION DATA (cont.)

1.5 What is the name, title, address and phone number of the person(s) designated as a point of contact for this report? (if same as question 1.4, write same in (1))

(1)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( ) _____
Phone Number

(2)

Name _____ Title _____

Street _____

City _____ State _____ Zip Code _____

( ) _____
Phone Number

2.0 CERTIFICATION

I (we) certify that the information and data presented in this report is factual and complete to the best of my (our) knowledge, and I (we) do hereby authorize its release for the purpose of complying with section 116 of the Public Utility Regulatory Policies Act, P.L. 95-617.

Name _____ Signature _____ Date _____

Title II, U.S.C. 1001, makes it a crime for any person knowingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

3.0 AS PART OF YOUR LEGAL RESPONSIBILITIES UNDER PURPA TITLES I AND III, PROVIDE THE FOLLOWING INFORMATION: (use continuation sheets 7(a)-7(g) if additional space is required)

ERA-166A
(3-79)

SCHEDULE 1

Form Approved
OMB No.

3.0 LEGAL RESPONSIBILITIES (cont.)

3.1 A list of the covered electric utilities for which you have ratemaking authority. (If none, write NONE in (1))

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____
(7) _____
(8) _____
(9) _____
(10) _____
(11) _____
(12) _____
(13) _____
(14) _____
(15) _____
(16) _____
(17) _____
(18) _____
(19) _____
(20) _____

3.2 A brief summarization of applicable State laws and regulations which provide ratemaking authority with respect to the covered utilities. (Attach a citation and/or other legal documents, if applicable.) (If none, write NONE in (1))

(1) _____
State law and/or regulation

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)		
3.2 Applicable State laws and regulations (cont.)	(2)	State law and/or regulation
	(3)	State law and/or regulation
	(4)	State law and/or regulation
	(5)	State law and/or regulation
	(6)	State law and/or regulation

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)		
3.2 Applicable State laws and regulations (cont.)	(7)	State law and/or regulation
	(8)	State law and/or regulation
	(9)	State law and/or regulation
	(10)	State law and/or regulation
3.3 An indication of any major restrictions or limitations on the authorities mentioned in 3.2.	(1)	

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)

3.3 Major restrictions or limitations (cont.)

(2) _____

(3) _____

(4) _____

(5) _____

3.4 A list of the additional utilities to be covered by next year's annual report; and

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)

3.5 A brief summarization of applicable administrative laws and procedures, including rules of evidence. (Attach a citation and/or other legal documents, if applicable.)

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

4.0 WHAT IS THE STATUS OF CONSIDERATION AND DETERMINATION PROCESS FOR EACH STANDARD?
(Use the Status of Consideration and Determination Process Codes found in the Instructions)

Line No.	UTILITY	STANDARD																					
		Cost of Service		Time of Day Rates		Declining Block Rates		Seasonal Rates		Interruptible Rates		Load Management Techniques		Advertising		Automatic Adjustment Clause		Termination of Service		Information to Consumers		Master Metering	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)
		G	I	G	I	G	I	G	I	G	I	G	I	G	I	G	I	G	I	G	I	G	I
1																							
2																							
3																							
4																							
5																							
6																							
7																							
8																							
9																							
10																							
11																							
12																							
13																							
14																							
15																							

NOTE: "G" indicates Generic; "I" indicates Individual.

Form Approved
OMB No.

SCHEDULE 1

ERA-166A
(3-79)

Line No.		(6)	(7)	(8)	(9)	(10)
	3.0 LEGAL RESPONSIBILITIES (cont.)					
	3.5 Applicable laws and procedures (cont.)					

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

5.0 WHAT IS THE NAME(S), ADDRESS(ES) AND TELEPHONE NUMBER(S) OF THE INDIVIDUAL(S) RESPONSIBLE FOR DISTRIBUTING PUBLIC NOTICE INFORMATION REGARDING HEARING SCHEDULES, DATA AVAILABLE, ETC.?

(1) Name / Street / City / State / Zip Code / ( ) Phone Number

(2) Name / Street / City / State / Zip Code / ( ) Phone Number

6.0 WHAT ARE THE ONGOING AND NEXT REPORTING YEAR HEARINGS IN WHICH ANY OF THE STANDARDS WILL BE CONSIDERED? (Use continuation sheets 14a-14f if additional space is required.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One: Generic	Check One: Individual
	(a)	(b)	(c)	(d)	(e)	(f)
1						
2						
3						

ERA-166A
(3-79)

SCHEDULE 1

OMB No.

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One: Generic	Check One: Individual
	(a)	(b)	(c)	(d)	(e)	(f)
4						
5						
6						
7						
8						

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
9						
10						
11						
12						
13						

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
14						
15						
16						
17						
18						

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
19						
20						
21						
22						
23						

ERA-166A
(3-79)

OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
24						
25						
26						
27						
28						

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
29						
30						
31						
32						
33						

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE 1

7.0 COMPENSATION DATA

7.1 What is the total number of compensated participants or intervenors in the consideration and determination process for the standards? _____

7.2 What is the total dollars amount of such funding? $ _____

8.0 ATTACHMENTS (Check the appropriate box)

8.1 Attach as an appendix a copy of the rules and procedures governing Public Notice procedures.
(1) ☐ Existent and attached
(2) ☐ Nonexistent

8.2 Attach as an appendix a copy of the procedures or rules governing the notification of the consumer regarding (a) orders issued and (b) the impact of the orders.
(1) ☐ Existent and attached
(2) ☐ Nonexistent

8.3 Attach as an appendix a copy of any rules governing monetary compensation for participants or intervenors in the consideration and determination process for the standards.
(1) ☐ Existent and attached
(2) ☐ Nonexistent

ENTER ADDITIONAL COMMENTS HERE:

EKA-166A
(3-79)

Form Approved
OMB No.

U. S. DEPARTMENT OF ENERGY
Economic Regulatory Administration
Washington, D. C. 20461

PURPA ANNUAL REPORT ON ELECTRIC UTILITIES

SCHEDULE: (2-12)

STANDARD: (to be answered for each standard)
This report is mandatory under P.L. 95-617 (PURPA Section 116)

1.0 WHAT IS THE NAME OF THIS UTILITY? _____

2.0 WHAT IS THE STATUS OF THE CONSIDERATION AND DETERMINATION PROCESS FOR THIS STANDARD? (Refer to the Status of Consideration and Determination Process Codes found in the Instructions.)

(1) ☐ 1 (5) ☐ 5
(2) ☐ 2 (6) ☐ 6
(3) ☐ 3 (7) ☐ 7
(4) ☐ 4 (8) ☐ 8

NOTE: (1) If you checked status 1 or 2 in question 2.0 above, you do not complete this form.
(2) If you checked status 3 to 8 in question 2.0 above, answer 3.0.

3.0 WHAT ARE THE SOURCES THAT SUPPLIED THE DATA AND INFORMATION DURING THE HEARING FOR THIS STANDARD? (Check all that apply. Under items (1), (2), (6) and (7), give the specific source(s). For item (4), indicate the number of consumers by class.)

(1) ☐ Another State Agency
(a) _____
(b) _____
(c) _____
(d) _____
(e) _____

(2) ☐ Federal Government
(a) _____
(b) _____
(c) _____
(d) _____
(e) _____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

3.0 SOURCES (cont.)

(3) ☐ Staff of State Regulatory Authority (or covered nonregulated utility)

(4) ☐ Consumer(s) within class(es) of utility

Class	Number of Consumers
(a) Residential	
(b) Commercial	
(c) Industrial	
(d)	
(e)	

(5) ☐ Utility representative

(6) ☐ Public interest groups which are different from the consumer class(es)
(a) _____
(b) _____
(c) _____
(d) _____
(e) _____

(7) ☐ Other (specify):
(a) _____
(b) _____
(c) _____
(d) _____
(e) _____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

4.0 HAS A STAFF REPORT BEEN PREPARED?	(a) ☐ Yes	....attach a bibliography of reports, periodicals, computer programs and other data and information utilized in its preparation
	(b) ☐ No	
5.0 IS THERE ADDITIONAL INFORMATION OR DATA REQUIRED TO FULLY EVALUATE THE STANDARD DURING THE CONSIDERATION PROCESS?	(a) ☐ Yes	....answer 6.0
	(b) ☐ No	.....skip to the instruction box located after 7.0
6.0 IS THIS INFORMATION OR DATA AVAILABLE?	(a) ☐ Yes	....skip to the instruction box located after 7.0
	(b) ☐ No	.....answer 7.0
7.0 EXPLAIN WHAT TYPE OF INFORMATION OR DATA THIS IS AND WHY IT IS UNAVAILABLE.	_____	
	_____	
	_____	
	_____	
	_____	

NOTE: (1) If you checked Status 3 in question 2.0, skip to 18.0

(2) If you checked Status 4 to 8 in question 2.0, answer 8.0.

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

8.0 WHAT IS THE ANTICIPATED COST IMPACT OVER THE NEXT TEN YEARS RESULTING FROM THE IMPLEMENTATION OF THIS STANDARD? (Yearly, if available, or total for ten year period)

Line No.	Year	Impact on Utility	Impact on State Regulatory Authority (if applicable)
	(a)	(b)	(c)
(1)	1979	$	$
(2)	1980	$	$
(3)	1981	$	$
(4)	1982	$	$
(5)	1983	$	$
(6)	1984	$	$
(7)	1985	$	$
(8)	1986	$	$
(9)	1987	$	$
(10)	1988	$	$
(11)	1989	$	$
(12)	Total	$	$

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

9.0 WHAT IS THE ANTICIPATED SAVINGS OVER THE NEXT TEN YEARS RESULTING FROM IMPLEMENTATION OF THIS STANDARD? (Yearly, if available, or total for ten year period)

Line No.	Year	Impact on Utility	Impact on State Regulatory Authority (if applicable)
	(a)	(b)	(c)
(1)	1979	$	$
(2)	1980	$	$
(3)	1981	$	$
(4)	1982	$	$
(5)	1983	$	$
(6)	1984	$	$
(7)	1985	$	$
(8)	1986	$	$
(9)	1987	$	$
(10)	1988	$	$
(11)	1989	$	$
(12)	Total	$	$

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

10.0 WHAT IS THE APPROPRIATENESS OF THIS STANDARD IN CARRYING OUT THE THREE PURPOSES OF PURPA?

10.1 Conservation of energy supplied by electric utilities,
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

10.2 Optimization of the efficiency of use of facilities and resources by electric utilities, and
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

10.3 Equitable rates to electric consumers?
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

NOTE: (1) If you checked Status 4 in question 2.0, skip to 18.0

(2) If you checked Status 5 to 8 in question 2.0, answer 11.0.

11.0 WHAT ARE THE FACTORS, OTHER THAN THE THREE PURPOSES OF PURPA, THAT CONTRIBUTED SIGNIFICANTLY TO THE DECISION TO EITHER IMPLEMENT OR NOT IMPLEMENT THIS STANDARD? (Check all that apply. For items (7), (8) and (9), list the specific factors. For items (10) and (11), explain as appropriate.)
- (1) ☐ Understandability and simplicity of application
- (2) ☐ Feasibility of application
- (3) ☐ Public acceptability
- (4) ☐ Revenue adequacy
- (5) ☐ Revenue stability from year to year
- (6) ☐ Fairness of specific rates in apportioning total cost of service among consumers
- (7) ☐ State laws or regulations
  - (a) _____
  - (b) _____
  - (c) _____
  - (d) _____
  - (e) _____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

11.0 FACTORS (cont)

(8) ☐ Federal laws or regulations

(a) National Energy Conservation Policy Act, P.L. 95-619, Title II, Part 1, (For Load Management Techniques standard only; check box if applicable.) ☐

(b) _____

(c) _____

(d) _____

(e) _____

(9) ☐ Court decisions

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(10) ☐ Impact on another PURPA standard

_____

_____

_____

_____

_____

(11) ☐ Insufficient data or information

_____

_____

_____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

12.0 WHAT IS THE ORDER THAT WAS ISSUED TO JUSTIFY EITHER IMPLEMENTING OR NOT IMPLEMENTING THIS STANDARD? (Attach as an appendix a copy of this order.)

_____

_____

_____

13.0 WHAT IS THE METHOD OF IMPLEMENTING THIS STANDARD? (Check only one. For items (2), (3), (4) and (6), provide an explanation. For items (5) and (6), indicate to which class(es) of consumer this standard applies. For item (7), specify the method used.)

(1) ☐ Full (mandatory)

(2) ☐ Full (voluntary)

_____

_____

_____

_____

_____

(3) ☐ Phased (mandatory)

_____

_____

_____

_____

_____

(4) ☐ Phased (voluntary)

_____

_____

_____

_____

_____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

13.0 METHOD (cont.)

(5) ☐ Partial (mandatory)

(a) ☐ Residential

(b) ☐ Commercial

(c) ☐ Industrial

(d) ☐ Other (specify)

_____

(6) ☐ Partial (voluntary)

_____

_____

_____

_____

_____

(a) ☐ Residential

(b) ☐ Commercial

(c) ☐ Industrial

(d) ☐ Other (specify)

_____

(7) ☐ Other (specify):_____

_____

_____

_____

_____

_____

_____

ERA-166A
(3-79)

Form Approved
OMB No.

SCHEDULE ____

NOTE: (1) If you checked Status 5 to 7 in question 2.0, skip to 18.0

(2) If you checked Status 8 in question 2.0, answer 14.0.

14.0 WHAT ARE THE METHODS USED OR TO BE USED TO MONITOR THE IMPACT OF IMPLEMENTING THIS STANDARD? (Check all that apply.)

(1) ☐ Consumer questionnaires.

(2) ☐ Followup public hearings.

(3) ☐ System load factor changes.

(4) ☐ System load curve changes.

(5) ☐ Class load changes.

(6) ☐ Revenue levels and rate of return.

(7) ☐ Fuel mix changes.

(8) ☐ Other (specify):_____

_____

_____

_____

15.0 HOW LONG HAS THIS STANDARD BEEN IMPLEMENTED (ACTUALLY UTILIZED BY UTILITY)?

(1) Number of Years: _____

(2) Number of Months: _____

16.0 DURING IMPLEMENTATION OF THIS STANDARD, DID ANY SERIOUS AND UNANTICIPATED PROBLEMS ARISE?

(1) ☐ Yes....answer 17.0

(2) ☐ No.....skip to 18.0

17.0 WHAT WERE THESE SERIOUS AND UNANTICIPATED PROBLEMS, AND WHAT DID YOU DO TO REMEDY THEM?

_____

_____

_____

_____

_____

(3-79) SCHEDULE 2 Form Approved OMB No. (1 of 2)

18.0 Have you considered and/or adopted a definition of political and promotional advertising items?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.1 Political Advertising which:	X	X	X	X
18.11 Influences public opinion with respect to legislative matters				
18.12 Influences public opinion with respect to administrative matters				
18.13 Influences public opinion with respect to electoral matters				
18.14 Influences public opinion with respect to any controversial issue of public importance				
18.15 Other, specify:				
19.2 Promotional Advertising which:	X	X	X	X
19.21 Encourages selection or use of service or additional service				
19.22 Encourages selection or installation of any appliance or equipment designed to use such service				
19.23 Promotes the use of energy efficient appliances, equipment or services				
19.24 Other, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 2 (Continued) Form Approved OMB No. (2 of 2)

20.0 Have you considered and/or adopted a policy on recovering political and promotional advertising expenses?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
20.1 Political Advertising Expenses From:	X	X	X	X
20.11 Ratepayers				
20.12 Shareholders				
20.13 Other, specify:				
20.2 Promotional Advertising Expenses From:	X	X	X	X
20.21 Ratepayers				
20.22 Shareholders				
20.23 Other owners, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 3 Form Approved OMB No. (1 of 7)

18.0 Have you considered and/or adopted a policy requiring prior notice of termination be given to a consumer which includes:	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
18.1 Method of Issuing Notice(s)				
18.11 Mail				
18.12 Telephone				
18.13 Personal Visit				
18.14 Other, specify:				
18.2 Number of Notices Issued				
18.21 1				
18.22 2-3				
18.23 4 or more				
18.24 Varies				
18.3 Number of Days First Notice Issued Prior to Termination Date				
18.31 1-7				
18.32 8-21				
18.33 22 or more				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (2 of 7)

18.4 Number of Days Last Notice Issued Prior to Termination Date (if more than one notice is issued)	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
18.41 Same Day				
18.42 1-7				
18.43 8 or more				
18.5 Methods of Issuing Final Notice				
18.51 Mail				
18.52 Telephone				
18.53 Personal Visit				
18.54 Varies				
18.55 Other, specify:				
18.6 Notification to Occupants of Master Metered Building if service is to be shut off				
18.7 Third Party Notification Procedure				
18.71 Customer Designated Third Party				
18.72 Utility Company Designated Third Party				
18.8 Special Notification to Elderly and Handicapped Consumers (Explain):_____				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (3 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.0	Have you considered and/or adopted a policy requiring the utility to provide a notice of rights and remedies to the consumer?				
19.1	Methods of Issuing Notice of Rights and Remedies	X	X	X	X
19.11	Included in Notice of Termination	X	X	X	X
	(1) First Notice of Termination Only				
	(2) Last Notice Only (if more than one notice is given)				
	(3) Each Notice				
19.12	Separate Mailing				
19.13	Other, specify:				
19.2	Content of Notice of Rights and Remedies	X	X	X	X
19.21	Procedures for Handling Disputes	X	X	X	X
	(1) Informal Conference with Utility				
	(2) Hearing Before Regulatory Authority				
	(3) Filing of Injunction or Suit				
	(4) Other, specify:				
19.3	Repayment Information	X	X	X	X
19.31	Details of Installment Plan(s)				
19.32	List of Public and Private Sources of Consumer Financial Assistance				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (4 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.3	Details of Installment Plan(s) Continued				
19.33	Procedures for Tenants to Repay Landlord Debt				
19.4	Procedures for Occupants of Master Metered Building to Prevent Termination of Service if Landlord Fails to Pay				
19.5	Special Provisions for Elderly and Handicapped Consumers (Explain): _____ _____ _____ _____ _____				
		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.0	Have You Considered and/or Adopted Working Definitions for the Following?				
20.1	Consumer Health Dangers Which Include:	X	X	X	X
20.11	Weather Factors	X	X	X	X
	(1) Winter Months				
	(2) Summer Months				
	(3) Outdoor Temperature Outside Tolerable Range				
20.12	Health of Individual Consumer (no Doctor's Certificate Required)	X	X	X	X
	(1) Prior to Termination of Service				
	(2) Expected as a Result of Termination of Service				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (5 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.13	Health of Individual Consumer (Doctor's Certificate Required)				
	(1) Prior to Termination of Service				
	(2) Expected as a Result of Termination of Service				
20.14	The Age of the Consumer				
20.15	Other, specify:				
20.2	Consumer Ability to Pay	X	X	X	X
20.21	General Status	X	X	X	X
	(1) Total Lack of Resources to Pay the Bill				
	(2) Resources Sufficient to Pay in Installments Only				
20.22	Criteria for Assessing Status	X	X	X	X
	(1) Family Income Below Established Poverty Level				
	(2) Availability of Public Assistance				
	(3) Credit Investigation				
	(4) Age of Consumer				
	(5) Health of Consumer				
	(6) Other, specify:				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (6 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.22	Criteria for Assessing Status (Continued)				
20.3	Elderly Consumer, specify:				
20.4	Handicapped Consumer, specify:				
		Considered		Adopted	
21.0	Have you considered and/or adopted a policy which prohibits termination of service when:	Yes	No	Yes	No
		(a)	(b)	(c)	(d)
21.1	Consumer has disputed reasons for termination and matter has not been resolved. Specify consumer class _____.				
21.2	Consumer has not received reasonable prior notice (including notice of rights and remedies). Specify consumer class _____.				
21.3	Consumer has not had a reasonable opportunity to dispute the reasons for termination. Specify consumer class _____.				
21.4	Consumer Health Danger Exists and:	X	X	X	X
21.41	Consumer is unable to pay in accordance with requirements of utility's billing. Specify consumer class _____.				
21.42	Consumer can only afford to pay in installments. Specify consumer class _____.				
		Considered		Adopted	
22.0	Have you considered and/or adopted a method of recovering lost revenue?	Yes	No	Yes	No
		(a)	(b)	(c)	(d)
22.1	From Within Affected Class				
22.2	From Other Consumer Classes				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (7 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
22.0	Have you considered and/or adopted a method of recovering lost revenue? (Continued)				
22.3	Other, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 4 Form Approved OMB No. (1 of 3)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
18.0	Have you considered and/or adopted a policy requiring the identification of the extent to which demand (fixed) costs are included in the energy charge in:				
18.1	Residential Rates				
18.2	Commercial Rates				
18.3	Industrial Rates				
18.4	Other, specify:				
19.0	Have you considered and/or adopted a policy requiring that demand costs which do not directly vary with the amount of energy consumed be recovered through separate demand charges in:				
19.1	Residential Rates				
19.2	Commercial Rates				
19.3	Industrial Rates				
19.4	Other, specify:				
20.0	Have you considered and/or adopted a policy of allowing the utility to recover costs /other than energy (variable) costs/ in the energy component of:				
20.1	Residential Rates				
20.2	Commercial Rates				
20.3	Industrial Rates				
20.4	Other, specify:				

(3-79) SCHEDULE 4 (Continued) Form Approved OMB No. (2 of 3)

		Considered		Adopted	
21.0	Have you considered and/or adopted a policy requiring that any reduction in rates associated with increased usage (declining blocks) be based on the relationship between the characteristics of the load curves covered by that rate and:	Yes (a)	No (b)	Yes (c)	No (d)
21.1	The change in demand costs?				
21.2	The change in energy costs?				
21.3	The change in customer costs?				
22.0	Have you considered and/or adopted a method for estimating the impact of declining block rates on:	Considered Yes (a)	No (b)	Adopted Yes (c)	No (d)
22.1	Kilowatt-hour usage?				
22.2	Peak kilowatt demand?				
23.0	Have you considered and/or adopted a policy requiring (or allowing) the recovery of the following costs through the energy component of the declining block rate?	Considered Yes (a)	No (b)	Adopted Yes (c)	No (d)
23.1	Fuel and Purchased Power				
23.2	Production Operation Expenses (other than fuel costs and purchased power)				
23.3	Production Maintenance Expenses				
23.4	Operation and Maintenance Expenses (other than production)				
23.5	Depreciation Expenses				
23.6	Property Taxes				
23.7	Return and Associated Income Taxes				

(3-79) SCHEDULE 4 (Continued) Form Approved OMB No. (3 of 3)

		Considered		Adopted	
23.0	(Continued)	Yes (a)	No (b)	Yes (c)	No (d)
23.8	Taxes (other than income or property taxes)				
23.9	Special Facilities Costs				
23.10	Other, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 5 Form Approved OMB No. (1 of 4)

		Considered		Adopted	
18.0	Have you considered and/or adopted any of the following procedures for assessing seasonally-related variations in cost-of-service?	Yes (a)	No (b)	Yes (c)	No (d)
18.1	A method for identifying the periods in which system lambda is higher than the average system lambda with respect to:	X	X	X	X
18.11	Months of the Year				
18.12	Seasons of the Year				
18.2	A costing method which takes into account the impact of peak demand on the acquisition of new capacity?				
18.3	A method for assessing the impact of peak demand on capacity expansion, including identification of the periods in which capacity costs (in the long run) exceed average capacity costs with respect to:	X	X	X	X
18.31	Months of the Year				
18.32	Seasons of the Year				
18.4	A method for allocating the following costs to seasonal rating periods:	X	X	X	X
18.41	Consumer Costs				
18.42	Energy Costs				
18.43	Demand Costs				

(3-79) SCHEDULE 5 (Continued) Form Approved OMB No. (2 of 4)

		Considered		Adopted	
19.0	Have you considered and/or adopted a procedure for determining cost-effectiveness of implementing seasonal rates which takes into account any of the following:	Yes (a)	No (b)	Yes (c)	No (d)
19.1	A definition of long run:	X	X	X	X
19.11	1 - 5 years				
19.12	6 - 10 years				
19.13	Over 10 years				
19.2	Long Run Benefits	X	X	X	X
19.21	In Generator Fuel Savings				
19.22	In Total Operating Cost Savings				
19.23	In Capacity				
19.24	In Terms of Class Load Pattern Alternations				
19.25	To the Consumer Class (list benefits under comments)				
19.26	In Terms of Fairness of Rates				
19.27	Other, specify:				
19.3	Long Run Costs	X	X	X	X
19.31	Of Billing				
19.32	Of Consumer Education				

(3-79) SCHEDULE 5 (Continued) Form Approved OMB No. (3 of 4)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.33	To the Consumer Class (list cost(s) categories):				
	(1)				
	(2)				
	(3)				
	(4)				
19.34	Other, specify:				

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.0	Have you considered and/or adopted a position with respect to the minimum class elasticity of demand (percentage change in demand resulting from percentage change in price) needed to justify the cost of implementing seasonal rates for:				
20.1	Residential Class				
20.2	Commercial Class				
20.3	Industrial Class				

(3-79) SCHEDULE 5 (Continued) Form Approved OMB No. (4 of 4)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.0	Continued				
20.4	Other, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 6 Form Approved OMB No. (1 of 2)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
18.0	Have you considered and/or adopted a method of calculating interruptible rates which takes into account any of the following?				
18.1	Total cost of providing firm service by rating period	X	X	X	X
18.11	Demand Costs				
18.12	Energy Costs				
18.13	Consumer Costs				
18.2	Nondemand cost to provide interruptible service by rating period	X	X	X	X
18.21	Energy Costs				
18.22	Consumer Costs				
18.3	Optimal Amount of Interruptible Load				
19.0	Have you considered and/or adopted a requirement to survey potential loads suitable for interruptible rates to ascertain:	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.1	Potential number of interruptible loads				
19.2	Potential magnitude of interruptible loads				
19.3	Coincidence of load with high system loss of load probability				
19.4	Practical duration for each interruption				

(3-79) SCHEDULE 6 (Continued) Form Approved OMB No. (2 of 2)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.0	Have you considered and/or adopted criteria for initiating interruption of service which take into account:				
20.1	System peak exceeding critical level				
20.2	Reserve margin falling below predetermined level				
20.3	Peaking energy which is constrained				
20.4	Other, specify:				
21.0	Have you considered and/or adopted any of the following techniques for initiating interruption of loads?	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
21.1	Verbal request				
21.2	Utility controlled (remote)				
21.3	Utility controlled (on-site)				
22.0	Have you considered and/or adopted a requirement for periodic reporting of actual interruption of load?	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
22.1	Annually				
22.2	More often than annually				
22.3	With an accompanying explanation				

Enter any additional comments here:

(3-79) SCHEDULE 7 Form Approved OMB No. (1 of 7)

18.0 Have you considered and/or adopted working definitions for any of the following in relation to this standard?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.1 "Long Run"	X	X	X	X
18.11 1 - 5 years				
18.12 6 - 10 years				
18.13 Over 10 years				
18.2 Long run utility cost savings (associated with reducing maximum kilowatt demand)	X	X	X	X
18.21 Reduction in capital equipment (fixed) costs				
18.22 Reduction in system operating and maintenance (variable) costs				
18.23 Other, specify:				
18.3 Long run utility costs (associated with implementation of load management techniques)	X	X	X	X
18.31 Installed costs				
18.32 Operating and maintenance costs				
18.33 Consumer education costs				
18.34 Specialized personnel costs				
18.35 Administrative costs				
18.36 Other, specify:				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No. (2 of 7)

18.4 Reliability (of load management techniques)	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.41 Life expectancy of device				
18.42 Frequency of failure				
18.43 Ability to detect failure				
18.44 Downtime (usage factor)				
18.45 Availability of replacement parts				
18.46 Resistance to tampering and vandalism				
18.47 Other, specify:				
19.0 Have you considered and/or adopted a method of evaluating a load management technique regarding:	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
19.1 Its cost effectiveness which includes:	X	X	X	X
19.11 Reduction of maximum kilowatt demand on the utility which would be determined	X	X	X	X
(1) Yearly				
(2) Monthly				
(3) Daily				
(4) For the entire utility system				
(5) For a portion of the utility system				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No.

(3 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.12	Long run cost savings to the utility of such reduction exceeding the long run costs to the utility associated with the implementation of the load management technique:				
	(1) By a certain amount				
	(2) By any amount				
	(3) Other, specify:				
19.2	Its reliability				
19.3	Its usefulness in energy or capacity management				
20.0	Have you considered and/or adopted a policy requiring the utility to offer load management techniques to the consumer, the policy to include:	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.1	Methods of informing consumer	X	X	X	X
20.11	Program brochure as required under Title II, Part 1 of the National Energy Conservation Policy Act (NECPA), Public Law 95-619.				
20.12	Bill Stuffer				
20.13	Separate mailing				
20.14	Personal contact				
20.15	Media advertising	X	X	X	X
	(1) Television				
	(2) Radio				
	(3) Newspaper				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No.

(4 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.1	(Continued)				
20.16	Home audits (including those required by Title II, Part 1 of NECPA)				
20.17	Other, specify:				
20.2	Methods of supplying, installing and financing	X	X	X	X
20.21	Utility owned				
20.22	Consumer owned (utility supplied)				
20.23	Consumer owned (utility installed)				
20.24	Consumer owned (utility financed)				
20.25	Consumer owned - utility arranged installation and/or financing (as required by Title II, Part 1 of NECPA)				
21.0	Have you considered and/or adopted policies requiring the inclusion of any of the following load management techniques as part of the utility's offer to the consumer?	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
21.1	Load management devices:	X	X	X	X
21.11	Self-contained time switches which control the on/off status of electric consumption for:				
	(1) Water heating				
	(2) Space heating				
	(3) Air conditioning				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No.
(5 of 7)

21.11 (Continued)	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
(4) Industrial loads				
(5) Other, specify:				
21.12 Load limiters to control the maximum electric demand of an appliance, group of appliances, electric circuit or group of electric circuits				
(1) Interlock devices				
(2) Load cycling devices				
(3) Circuit breakers				
(4) Other, specify:				
21.13 Central (remote) control systems which provide for utility control of the on/off status of a customer's electric appliance				
(1) One way communication				
(2) Two way communication				
21.14 Customer energy storage systems for storing energy produced during offpeak period for use on peak				
(1) Water heating				
(2) Space heating				
(3) Air conditioning				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No.
(6 of 7)

21.14 (Continued)	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted N (d)
(4) Industrial loads				
(5) Other, specify:				
21.15 Energy usage feedback devices which provide the customer with a continuous display of the cost of energy during peak and offpeak periods.				
21.2 Load management rates				
21.21 Special load control rates				
(1) Water heating (residential)				
(2) Water heating (commercial)				
(3) Space heating (residential)				
(4) Space heating (commercial)				
(5) Air conditioning (residential)				
(6) Air conditioning (commercial)				
(7) Industrial loads				
(8) Other, specify:				

(3-79) SCHEDULE 7 (Continued) Form Approved OMB No.

(7 of 7)

21.22 Cost-based demand charges	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
(1) Residential consumers				
(2) Commercial consumers				
(3) Industrial consumers				
(4) Other, specify:				

Enter additional comments here:

(3-79) SCHEDULE 8 Form Approved OMB No.

(1 of 10)

18.0 Have you considered and/or adopted a policy requiring the use of any of the following sources of data in determining cost-of-service?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
18.1 System engineering, accounting and financial data	X	X	X	X
18.11 Reports periodically filed by the utility with the Federal Energy Regulatory Commission				
18.12 Reports periodically filed by the utility with the State				
18.13 Rate case filing requirements				
18.14 Other, specify: _____				
18.2 Class cost-of-service data	X	X	X	X
18.21 Reports periodically filed by the utility with the Federal Energy Regulatory Commission				
18.22 Reports periodically filed by the utility with the State				
18.23 Rate case filing requirements				
18.24 Other, specify: _____				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (2 of 10)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.0	Have you considered and/or adopted a policy requiring the use of any of the following types of cost data in determining cost-of-service?				
19.1	Embedded costs				
19.2	Future costs (specify time horizon) _____				
19.3	Average costs				
19.4	Marginal costs				
19.5	Other, specify: _____				
20.0	Have you considered and/or adopted a policy requiring any of the following methods for deriving load data?	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.1	Residential	X	X	X	X
20.11	Actual (individually metered)				
20.12	Estimated by statistical sample				
20.13	Estimated by transfer data (from other utility(ies))				
20.14	Estimated other, specify:				
20.2	All classes other than residential	X	X	X	X
20.21	Actual (individually metered)				
20.22	Estimated by statistical sample				
20.23	Estimated by transfer data (from other utility(ies))				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (3 of 10)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.2	(Continued)				
20.24	Estimated other, specify: _____				
21.0	Have you considered and/or adopted a policy requiring that any of the following factors be taken into account in determining class cost-of-service?	Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
21.1	Load Characteristics	X	X	X	X
21.11	Total system load curve	X	X	X	X
	(1) Peak summer day				
	(2) Peak winter day				
	(3) Monthly				
	(4) Annually				
21.12	Class load curve	X	X	X	X
	(1) Peak summer day				
	(2) Peak winter day				
	(3) Monthly				
	(4) Annually				

	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
21.13 Utility Load Factor				
(1) Average				
(2) Daily				
(3) Monthly				
(4) Annually				
21.14 Class load factor	X	X	X	X
(1) Average				
(2) Daily				
(3) Monthly				
(4) Annually				
21.15 Utility reserve margin				
21.16 Class kilowatt hour usage	X	X	X	X
(1) Annually				
(2) Seasonally				
(3) On peak				
21.2 Resource utilization characteristics	X	X	X	X

	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
21.21 Share of total costs which are capacity related				
(1) Current				
(2) Future year, specify:				
21.22 Share of total costs which are energy related	X	X	X	X
(1) Current				
(2) Future year, specify:				
21.23 Factors causing capacity expansion	X	X	X	X
(1) Annual peak kilowatt demand				
(2) Annual kilowatt-hour output				
(3) Replacement of existing capacity				
(4) Minimum reserve margin				
(5) Other, specify:				
21.24 Effect of (more or less) peak kilowatt demand on:	X	X	X	X
(1) Need for construction of additional capacity				
(2) Wear and tear on existing facilities				
(3) Allocation of fixed costs				
(4) Rate structure				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (6 of 10)

	Considered		Adopted	
21.25 Effect of (more of less) kilowatt-hour usage on:	Yes (a)	No (b)	Yes (c)	No (d)
(1) Need for construction of additional capacity				
(2) Wear and tear on existing facilities				
(3) Allocation of fixed costs				
(4) Rate structure				
22.0 Have you considered and/or adopted a policy requiring an assessment of the impact of system capacity expansion upon any of the following?	Considered Yes (a)	No (b)	Adopted Yes (c)	No (d)
22.1 Average fuel cost				
22.2 Average fixed production costs				
22.3 Average total production costs				
23.0 Have you considered and/or adopted any of the following policies in computing return?	Considered Yes (a)	No (b)	Adopted Yes (c)	No (d)
23.1 Establishing rate base	X	X	X	X
23.11 Construction work in progress included				
23.12 Original cost less depreciation reserve				
23.13 Fair value				
23.14 Replacement cost				
23.15 Other, specify:				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (7 of 10)

	Considered		Adopted	
23.2 Establishing rate of return	Yes (a)	No (b)	Yes (c)	No (d)
23.21 Capitalization structure				
23.22 Return on common equity				
23.23 Same rate of return for each consumer class				
24.0 Have you considered and/or adopted a policy requiring any of the following classifications of cost?	Considered Yes (a)	No (b)	Adopted Yes (c)	No (d)
24.1 Current costs	X	X	X	X
24.11 Consumer related costs				
24.12 Demand related costs				
24.13 Energy related costs				
24.14 Other, specify:				
24.2 Future costs, specify year:_____	X	X	X	X
24.21 Consumer related costs				
24.22 Demand related costs				
24.23 Energy related costs				
24.24 Other, specify:				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (8 of 10)

25.0 Have you considered and/or adopted a policy requiring any of the following costing methodologies for developing cost-of-service studies?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
25.1 Embedded costs	X	X	X	X
25.11 Coincident peak (single month)				
25.12 Coincident peak (multi-month)				
25.13 Non-coincident peak				
25.14 Average and excess				
25.15 Average of coincident peak (cp) and non-coincident peak (ncp)				
25.16 Probability of negative margin				
25.17 Other, specify:				
25.2 Long run marginal costs (capacity costs treated as variable)	X	X	X	X
25.21 Perturbation				
25.22 Peaker				
25.23 Full additional				
25.24 Production function				
25.25 Linear				
25.26 Other, specify:				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (9 of 10)

25.0 (Continued)	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
25.3 Short run marginal costs (capacity costs treated as fixed)				
26.0 Have you considered and/or adopted a policy requiring the use of any of the following factors in determining system capacity expansion	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
26.1 kWh output requirements				
26.2 Maximum kw demand				
26.3 Year-wide kw demand				
26.4 Degradation of generating facilities				
26.5 Other, specify:				
27.0 Have you considered and/or adopted any of the following criteria for selecting a particular cost method?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
27.1 Proper pricing signals				
27.2 Data availability				
27.3 Complexity of method				
27.4 Tradition				
27.5 Other, specify:				

(3-79) SCHEDULE 8 (Continued) Form Approved OMB No. (10 of 10)

	Considered		Adopted	
28.0 Have you considered and/or adopted a policy requiring that rates be set to reflect any of the following cost classifications?	Yes (a)	No (b)	Yes (c)	No (d)
28.1 Consumer related costs				
28.2 Demand related costs				
28.3 Energy related costs				

	Considered		Adopted	
29.0 Have you considered and/or adopted a policy requiring rates for essential residential needs which are lower than those determined by cost-of-service? (If No to either considered or adopted, explain in Comments section.)	Yes (a)	No (b)	Yes (c)	No (d)

Enter any additional comments here:

(3-79) SCHEDULE 9 Form Approved OMB No. (1 of 5)

	Considered		Adopted	
18.0 Have you considered and/or adopted a policy which requires (or allows) automatic rate adjustments for the following cost items?	Yes (a)	No (b)	Yes (c)	No (d)
18.1 Fuel	X	X	X	X
18.11 Oil				
18.12 Natural gas				
18.13 Coal				
18.14 Nuclear				
18.15 Other, specify:				
18.2 Purchased power (firm)	X	X	X	X
18.21 Demand				
18.22 Energy, fuel				
18.23 Energy, other than fuel				
18.3 Purchased power (emergency)	X	X	X	X
18.31 Demand				
18.32 Energy, fuel				
18.33 Energy, other than fuel				

(3-79) SCHEDULE 9 (Continued) Form Approved OMB No. (2 of 5)

	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
18.4 Purchased Power (economy)				
18.41 Energy				
18.42 Other, specify:				
18.5 Taxes				
18.6 Operating and maintenance				
18.7 Research and development				
18.8 Other cost-of-service items	X	X	X	X
18.81 Plant investment				
18.82 Cost of capital				
18.83 Other, specify:				
19.0 Have you considered and/or adopted any of the following policies with respect to billing for costs subject to automatic adjustment clauses?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
19.1 Separate identification of each cost category on the bill				
19.2 Reflection on the bill of the total cost in the applicable adjustment cost category (zero-based)				
19.3 Reflection on the bill of only the deviation in the adjustment category from some predetermined norm (as distinct from a "zero-based" presentation)				

(3-79) SCHEDULE 9 (Continued) Form Approved OMB No. (3 of 5)

	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
20.0 Have you considered and/or adopted a policy requiring periodic review of the impact of the automatic adjustment clause on the efficient use of utility resources in terms of:				
20.1 Type of review required	X	X	X	X
20.11 Full evidentiary hearing				
20.12 Public hearing without opportunity for cross-examination				
20.13 Other, specify:				
20.2 Frequency of review	X	X	X	X
20.21 Annually				
20.22 Every 2 years				
20.23 Every 4 years				
20.24 Other, specify:				
20.3 Whether the review takes into account the presence of incentives for efficiency with respect to:	X	X	X	X
20.31 Fuel purchases				
20.32 Bulk power purchases				
20.33 Other purchases, specify:				
20.34 Power plant availability				
20.35 Combustion efficiency				
20.36 Capacity expansion				

(3-79) SCHEDULE 9 (Continued) Form Approved OMB No. (4 of 5)

20.3 Continued	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
20.37 Costs not subject to periodic fluctuation				
21.0 Have you considered and/or adopted a policy requiring periodic review of activities pursuant to the automatic adjustment clause in terms of:	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
21.1 Type of review required	X	X	X	X
21.11 Full evidentiary hearing				
21.12 Public hearing without opportunity for cross-examination				
21.13 Other, specify:				
21.2 Frequency of review	X	X	X	X
21.21 Annually				
21.22 Every 2 years				
21.23 Every 4 years				
21.24 Other, specify:				
21.3 Elements included in the review	X	X	X	X
21.31 An audit of utility management practices	X	X	X	X
(1) Contracting procedures				
(2) Accounting procedures				

(3-79) SCHEDULE 9 (Continued) Form Approved OMB No. (5 of 5)

21.3 Continued	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
21.32 Written report from utility on their management practices				
21.33 An audit of the management practices of any wholly-owned subsidiaries	X	X	X	X
(1) Which you regulate				
(2) Which you do not regulate				
21.34 Formal disclosure of any corporate relationships between the utility and any of its suppliers				
21.35 An audit of utility costs				
22.0 Have you considered and/or adopted a policy of requiring that prior notice of activation of any automatic adjustment clause be provided to you?	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
23.0 Have you considered and/or adopted a plan for utility operation of automatic adjustment clauses during abnormal or emergency periods (i.e., oil embargo, coal strike, etc.)	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)

Enter any additional comments here:

(3-79) SCHEDULE 10 Form Approved OMB No. (1 of 5)

18.0 Have you considered and/or adopted any of the following for assessing time-related variations in cost-of-service?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
18.1 A method for gathering data on incremental operating expenses (system lambda)				
18.2 A method for identifying the periods in which system lambda is higher than the average system lambda with respect to:	X	X	X	X
18.21 Hours of the day				
18.22 Days of the week				
18.3 A costing method which takes into account the impact of peak demand on the acquisition of new capacity				
18.4 A method for assessing the impact of peak demand on capacity expansion including identification of the periods in which capacity costs (in the long run) exceed average capacity with respect to:	X	X	X	X
18.41 Hours of the day				
18.42 Days of the week				
18.5 A method for allocating the following costs to time-of-day rating periods:	X	X	X	X
18.51 Consumer costs				
18.52 Energy costs				
18.53 Demand costs				

(3-79) SCHEDULE 10 (Continued) Form Approved OMB No. (2 of 5)

19.0 Have you considered and/or adopted a policy on resource allocation which includes any of the following:	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
19.1 A method for optimizing operating costs, such as generating fuel expense				
19.2 A method of limiting fixed cost items, such as capital for new capacity				
19.3 An assessment as to whether the level and structure of retail rates affects the use of resources by affecting consumer behavior				
19.4 The placement of a higher priority, in setting rates on the efficient use of:	X	X	X	X
19.41 Operating cost items				
19.42 Capacity cost items				
20.0 Have you considered and/or adopted a procedure for determining cost-effectiveness of implementing time-of-day rates which take into account any of the following:	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
20.1 A definition of long run	X	X	X	X
20.11 1-5 years				
20.12 6-10 years				
20.13 Over 10 years				
20.2 Long run benefits	X	X	X	X
20.21 In generator fuel savings				
20.22 In total operating cost savings				

(3-79) SCHEDULE 10 (Continued) Form Approved OMB No. (3 of 5)

20.2 Continued	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
20.23 In capacity expansion savings				
20.24 In terms of class load pattern alterations				
20.25 To the consumer class (list benefits under comments)				
20.26 In terms of fairness of rates				
20.27 Other, specify:				
20.3 Long run costs	X	X	X	X
20.31 Of metering				
20.32 Of meter reading				
20.33 Of billing				
20.34 Of consumer education				
20.35 To the consumer class (list cost) _____				
20.36 Other, specify:				

(3-79) SCHEDULE 10 (Continued) Form Approved OMB No. (4 of 5)

20.4 Criteria for implementing time-of-day rates based on the cost/benefit analysis	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
20.41 Benefits exceeding costs by a predetermined margin				
20.42 Benefits exceeding costs by any margin				
20.43 Other, specify:				
21.0 Have you considered and/or adopted a position, with respect to the assessment of time-of-day metering, regarding any of the following:	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
21.1 Availability of the meter(s)				
21.2 Reliability of the meter(s)				
21.3 Capability of the meter(s)				
21.4 Purchase and installation costs of the meter(s)				
21.5 Operating and maintenance costs of the meter(s)				
22.0 Have you considered and/or adopted a position with respect to the following regarding class elasticity of demand (percentage change in demand resulting from percentage change in price)?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
22.1 Minimum elasticity needed to justify the cost of implementing time-of-day rates for:	X	X	X	X
22.11 Residential class				
22.12 Commercial class				
22.13 Industrial Class				

(3-79) SCHEDULE 10 (Continued) Form Approved OMB No. (5 of 5)

22.1 Continued	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
22.14 Other, specify:				
22.2 Alternative means of deriving elasticity values measured by:	X	X	X	X
22.21 Actual (individually metered)				
22.22 Estimated by statistical sample				
22.23 Estimated by transfer data (from other utility)				
22.24 Estimated other, specify:				
22.25 Econometric literature				
Enter any additional comments here:				

(2-79) SCHEDULE 11 Form Approved OMB No. (1 of 7)

18.0 Have you considered and/or adopted a policy requiring the utility to provide the consumer with an explanation of his existing rate schedule and any rate schedule applied for (or proposed by a nonregulated utility)?	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
18.1 Existing rate schedule explanation	X	X	X	X
18.11 Form	X	X	X	X
(1) Table				
(2) Graph				
(3) Narrative				
(4) Other, specify:				
18.12 Content	X	X	X	X
(1) Actual tariff provisions				
(2) Sample calculation of bill based upon average usage within class				
(3) Class cost-of-service justification for rate				
(4) Recent trends in cost-of-service				
(5) Alternative tariffs for which consumer might qualify				
(6) Consumer inquiry procedures				
(7) Other, specify:				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No. (2 of 7)

18.13 Method of transmittal	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
(1) Mailing not associated with billing				
(2) Bill stuffer				
(3) Other, specify:				
18.14 Time schedule for transmittal	X	X	X	X
(1) Not later than 60 days after date of commencement of service to consumer or not later than 90 days after adoption of this standard, whichever occurred last				
(2) Not later than 30 days (60 days in case of utility using bi-monthly billing system) after such utility's application for rate change (or proposal of such change by a nonregulated utility)				
(3) Other, specify:				
18.2 Rate schedule applied for (or proposed by nonregulated utility	X	X	X	X
18.21 Form	X	X	X	X
(1) Table				
(2) Graph				
(3) Narrative				
(4) Other, specify:				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No. (3 of 7)

18.22 Content	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
(1) Actual tariff provisions				
(2) Sample calculation of bill based upon average usage within class				
(3) Class cost-of-service justification for rate				
(4) Recent trends in cost-of-service				
(5) Alternative tariffs for which consumer might qualify				
(6) Consumer inquiry procedures				
(7) Other, specify:				
18.23 Method of transmittal	X	X	X	X
(1) Mailing not associated with billing				
(2) Bill stuffer				
(3) Other, specify:				
18.24 Time schedule for transmittal	X	X	X	X
(1) Not later than 60 days after date of commencement of service to consumer or not later than 90 days after adoption of this standard, whichever occurred last				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No. (4 of 7)

18.24 Continued	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
(2) Not later than 30 days (60 days in case of utility using bi-monthly billing system) after such utility's application for rate change (or proposal of such change by a nonregulated utility)				
(3) Other, specify:				
19.0 Have you considered and/or adopted a policy requiring the utility to provide the consumer with a summary of the existing rate schedules applicable to each of the major classes of consumers for which there is a separate rate?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
19.1 Form	X	X	X	X
19.11 Table				
19.12 Graph				
19.13 Narrative				
19.14 Other, specify:				
19.2 Content	X	X	X	X
19.21 Actual tariff provisions				
19.22 Calculation of bill using average usage for each class				
19.23 Class cost-of-service justification for each rate				
19.24 Recent trends in cost-of-service				
19.25 Average revenues per kWh for each major class				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No. (5 of 7)

19.2 Continued	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
19.26 Identification of any classes whose rates are not summarized				
19.27 Consumer inquiry procedures				
19.28 Other, specify:				
19.3 Method of transmittal	X	X	X	X
19.31 Mailing not associated with billing				
19.32 Bill stuffer				
19.33 Other, specify:				
19.4 Time schedule for transmittal	X	X	X	X
19.41 Once a year				
19.42 Other, specify:				
20.0 Have you considered and/or adopted a policy of requiring the utility to provide the consumer, upon request a statement of his actual consumption (or degree-day adjusted consumption) of electric energy for each billing period during the prior year?	Considered		Adopted	
	Yes	No	Yes	No
	(a)	(b)	(c)	(d)
20.1 Method for consumer to initiate request	X	X	X	X
20.11 Telephone				
20.12 Letter				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No.

(6 of 7)

20.1 Continued	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
20.13 Returning signed request form supplied by utility				
20.2 Reporting of consumption data	X	X	X	X
20.21 Actual consumption				
20.22 Degree-day adjusted consumption				
20.3 Form of information	X	X	X	X
20.31 Table				
20.32 Graph				
20.33 Other, specify:				
20.4 Designation of prior year	X	X	X	X
20.41 Calendar year preceding the year in which request was received				
20.42 12 months immediately preceding the month in which request was received				
20.43 Other, specify:				
20.5 Method of transmitting information	X	X	X	X
20.51 Separate mailing				
20.52 Other, specify:				

(3-79) SCHEDULE 11 (Continued) Form Approved OMB No.

(7 of 7)

21.0 Have you considered and/or adopted the position that consumer consumption data for the prior year need not be provided if any of the following conditions exist?	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
21.1 Such consumption data is not reasonably ascertainable (explain)_____				
21.2 Such consumption data is being provided on each consumer bill				

Enter any additional comments here:

(3-79) SCHEDULE 12 Form Approved OMB No. (1 of 3)

18.0 Have you considered and/or adopted a working definition of buildings to be covered by this standard which includes any of the following characteristics?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.1 Type	X	X	X	X
18.11 Residential building				
18.12 Office building				
18.13 Shopping center				
18.14 Industrial park				
18.15 Mobile home park				
18.16 Transient facility, e.g., hotel				
18.17 Other, specify:				
18.2 Form of ownership	X	X	X	X
18.21 Public				
18.22 Private				
18.3 Definition of "new building"	X	X	X	X
18.31 Construction in progress as of date of order				
18.32 Building permit applied for as of date of order				
18.33 Other, specify:				

(3-79) SCHEDULE 12 (Continued) Form Approved OMB No. (2 of 3)

18.4 Number of units in building	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.41 At least two				
18.42 Other, specify:				
18.5 Portion of energy under occupant control	X	X	X	X
18.51 Up to 40 percent				
18.52 41 - 75 percent				
18.53 76 - 100 percent				
19.0 Have you considered and/or adopted a procedure for determining cost/benefit of individual metering to the consumer which takes into account any of the following?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
19.1 Costs	X	X	X	X
19.11 Purchasing and installing meter				
19.12 Meter reading and billing				
19.13 Other, specify:				
19.2 Definition of "long run"	X	X	X	X
19.21 1 - 5 years				
19.22 6 - 10 years				
19.23 More than 10 years				

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.3	Long run benefits				
19.31	Dollars saved				
19.32	Energy saved				
19.33	Other, specify:				
19.4	Criteria for individual metering based on cost/benefit analysis	X	X	X	X
19.41	Long run benefits to consumer exceed costs of purchasing and installing meters				
19.42	Long run benefits to consumer exceed total costs as defined by utility				

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.0	Have you considered and/or adopted a policy of restricting the use of master meters in new buildings?				
20.1	Total prohibition				
20.2	Partial restriction (explain) _____ _____ _____ _____				

Enter any additional comments here:

Appendix B - PURPA Annual Report on Gas Utilities

U. S. DEPARTMENT OF ENERGY

Economic Regulatory Administration

Instructions for Filing ERA-166B
PURPA ANNUAL REPORT ON GAS UTILITIES

General Information and Instructions

I. **Purpose (Reserved)**

II. Completion of Application

A. Schedule 1 shall be completed only once by the State regulatory authority or covered nonregulated utility.

B. For item 4.0 in Schedule 1, fill in the chart by placing the name of each covered utility in the vertical column under utility #1, utility #2, etc. Also insert the single number which best represents the chronological status of the consideration and determination process (as of the end of the reporting period) in the appropriate column. Enter this number into the generic (G) or individual hearing (I) column, as appropriate. If the consideration process has not yet begun, enter the status (#1) in the (G) column.

Chronological Status

1. "Consideration process" has not yet begun.
2. Notice of prehearing or hearing has been issued.
3. Prehearing or hearing is in progress.
4. Decision on "appropriateness" is pending.
5. Written determination to adopt the standard has been issued.
6. Written determination not to adopt the standard has been issued.
7. Judicial review of determination is pending.
8. Standard has been implemented.

C. Schedules 2 and 3 (including questions 1.0 through 17.0 which are common to each standard) shall be completed by each State regulatory authority or covered nonregulated utility as indicated on the schedule. In the case of a State regulatory authority, schedules 2 and 3 shall be completed for each covered gas utility with respect to which that authority has ratemaking authority.

General Information and Instructions (cont.)

D. On Schedules 2 and 3, the State regulatory authority or covered nonregulated utility shall check (✓) "Considered - Yes" or "Considered - No" for every element of each question beginning with 18.0 that has a space provided for an answer.

E. When answering a question with a response "other, specify" summarize the response in the space provided, if possible.

F. Use additional pages and attachments as needed to provide supplemental data to any schedule. When providing supplemental data, attach it as a numbered appendix, consecutively numbered starting with 1, and indicate the appendix number in the appropriate space on the schedule.

G. Enter wherever requested, the date as two digits. For example, enter May 6, 1975 as ⌀5 ⌀6 75.

H. If further information is needed, call William G. Smith of the Economic Regulatory Administration at (202) 254-9700.

III. Where to Submit Application (Reserved)

IV. When to Submit (Reserved)

V. Reporting Period (Reserved)

(3-79) OMB No. ____

Definitions

A - Class - (Reserved)
B - Covered electric utility - (Reserved)
C - Covered gas utility - (Reserved)
D - Electric consumer - (Reserved)
E - Federal agency - (Reserved)
F - Gas Consumer - Reserved)
G - Nonregulated electric utility - (Reserved)
H - Nonregulated gas utility - (Reserved)
I - Rate - (Reserved)
J - Ratemaking authority - (Reserved)
K - Sale - (Reserved)
L - State - (Reserved)
M - State agency - (Reserved)
N - State regulated electric utility - (Reserved)
O - State regulated gas utility - (Reserved)
P - State regulatory authority - (Reserved)

Specific Instructions

Schedule 1
State Regulatory Authority
(or covered nonregulated utility)
Information

Item No.	Instruction
	Schedules 2 and 3:
2	Advertising Standard
3	Termination of Service Standard

(3-79) OMB No.

U. S. DEPARTMENT OF ENERGY
Economic Regulatory Administration
Washington, D. C. 20461

PURPA ANNUAL REPORT ON GAS UTILITIES

SCHEDULE 1

State Regulatory Authority (or Covered Nonregulated Utility) Information

This report is mandatory under P.L. 95-617 (PURPA Section 309)

1.0 IDENTIFICATION DATA

1.1 What is the date of submission of this report? Month Day Year

1.2 What is the period covered by this report? From: Month Day Year
To: Month Day Year

1.3 What is the name and address of the State regulatory authority (or covered nonregulated utility)?
Name
Street
City State Zip Code

1.4 What is the name, title, address and phone number of the person(s) responsible for the preparation of this form?
(1)
Name Title
Street
City State Zip Code
( ) Phone Number
(2)
Name Title
Street
City State Zip Code
( ) Phone Number

ERA-166B
(3-79) SCHEDULE 1 OMB No.

1.0 IDENTIFICATION DATA (cont.)

1.5 What is the name, title, address and phone number of the person(s) designated as a point of contact for this report? (if same as question 1.4, write same in (1))
(1)
Name Title
Street
City State Zip Code
( ) Phone Number
(2)
Name Title
Street
City State Zip Code
( ) Phone Number

2.0 CERTIFICATION

I (we) certify that the information and data presented in this report is factual and complete to the best of my (our) knowledge, and I (we) do hereby authorize its release for the purpose of complying with section 309 of the Public Utility Regulatory Policies Act, P.L. 95-617.

Name	Signature	Date

Title II, U.S.C. 1001, makes it a crime for any person knowingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

3.0 AS PART OF YOUR LEGAL RESPONSIBILITIES UNDER PURPA TITLES I AND III, PROVIDE THE FOLLOWING INFORMATION: (use continuation sheets 7(a)-7(g) if additional space is required)

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)

3.1 A list of the covered gas utilities for which you have ratemaking authority. (If none, write NONE in (1))

(1)
(2)
(3)
(4)
(5)
(6)
(7)
(8)
(9)
(10)
(11)
(12)
(13)
(14)
(15)
(16)
(17)
(18)
(19)
(20)

3.2 A brief summarization of applicable State laws and regulations which provide ratemaking authority with respect to the covered utilities. (Attach a citation and/or other legal documents, if applicable.) (If none, write NONE in (1))

(1)
State law and/or regulation

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)

3.2 Applicable State laws and regulations (cont.)

(2)
State law and/or regulation

(3)
State law and/or regulation

(4)
State law and/or regulation

(5)
State law and/or regulation

(6)
State law and/or regulation

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)	
3.2 Applicable State laws and regulations (cont.)	(7) State law and/or regulation (8) State law and/or regulation (9) State law and/or regulation (10) State law and/or regulation
3.3 An indication of any major restrictions or limitations on the authorities mentioned in 3.2.	(1)

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)	
3.3 Major restrictions or limitations (cont.)	(2) (3) (4) (5)
3.4 A list of the additional utilities to be covered by next year's annual report; and	(1) (2) (3) (4) (5)

ERA-1668
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)	
3.5 A brief summarization of applicable administrative laws and procedures, including rules of evidence. (Attach a citation and/or other legal documents, if applicable.)	(1)
	(2)
	(3)
	(4)
	(5)

ERA-1668
(3-79)

Form Approved
OMB No.

SCHEDULE 1

3.0 LEGAL RESPONSIBILITIES (cont.)	
3.5 Applicable laws and procedures (cont.)	(6)
	(7)
	(8)
	(9)
	(10)

ERA-166B
(3-79)

OMB No.

SCHEDULE 1

4.0 WHAT IS THE STATUS OF CONSIDERATION AND DETERMINATION PROCESS FOR EACH STANDARD? (Use the Status of Consideration and Determination Process Codes found in the Instructions.)

Line No.	STANDARD				
	Utility (a)	Advertising (b)	Advertising (c)	Termination of Service (d)	Termination of Service (e)
	Nature:	Generic	Individual	Generic	Individual
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

5.0 WHAT IS THE NAME(S), ADDRESS(ES) AND TELEPHONE NUMBER(S) OF THE INDIVIDUAL(S) RESPONSIBLE FOR DISTRIBUTING PUBLIC NOTICE INFORMATION REGARDING HEARING SCHEDULES, DATA AVAILABLE, ETC.?

(1) _____ Name
_____ Street
_____ City _____ State _____ Zip Code
( ) _____ Phone Number

(2) _____ Name
_____ Street
_____ City _____ State _____ Zip Code
( ) _____ Phone Number

6.0 WHAT ARE THE ONGOING AND NEXT REPORTING YEAR HEARINGS IN WHICH ANY OF THE STANDARDS WILL BE CONSIDERED? (Use continuation sheets 14a-14f if additional space is required.)

Line No.	Date and Time of Hearing (a)	Location of Hearing (b)	Standard(s) Being Considered (c)	Utility(ies) for Which Standard(s) is being considered (d)	Check One: Generic (e)	Check One: Individual (f)
1						
2						
3						

ERA-166B
(3-79)

SCHEDULE 1

OMB No.

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)						
Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
4						
5						
6						
7						
8						

ERA-166B
(3-79)

SCHEDULE 1

OMB No.

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)						
Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
9						
10						
11						
12						
13						

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
14						
15						
16						
17						
18						

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
19						
20						
21						
22						
23						

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
24						
25						
26						
27						
28						

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

6.0 ONGOING AND NEXT REPORTING YEAR HEARINGS (cont.)

Line No.	Date and Time of Hearing	Location of Hearing	Standard(s) Being Considered	Utility(ies) for Which Standard(s) is being considered	Check One	
					Generic	Individual
	(a)	(b)	(c)	(d)	(e)	(f)
29						
30						
31						
32						
33						

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE 1

7.0 COMPENSATION DATA	
7.1 What is the total number of compensated participants or intervenors in the consideration and determination process for the standards?	_____
7.2 What is the total dollar amount of such funding?	$ _____
8.0 ATTACHMENTS (Check the appropriate box)	
8.1 Attach as an appendix a copy of the rules and procedures governing Public Notice procedures.	(1) ☐ Existent and attached (2) ☐ Nonexistent
8.2 Attach as an appendix a copy of the procedures or rules governing the notification of the consumer regarding (a) orders issued and (b) the impact of the orders.	(1) ☐ Existent and attached (2) ☐ Nonexistent
8.3 Attach as an appendix a copy of any rules governing monetary compensation for participants or intervenors in the consideration and determination process for the standards.	(1) ☐ Existent and attached (2) ☐ Nonexistent
ENTER ADDITIONAL COMMENTS HERE:	

ERA-166B
(3-79)

OMB No.

U. S. DEPARTMENT OF ENERGY
Economic Regulatory Administration
Washington, D. C. 20461

PURPA ANNUAL REPORT ON GAS UTILITIES

SCHEDULE: (2 and 3)

STANDARD: (to be answered for each standard)
This report is mandatory under P.L. 95-617 (PURPA Section 309)

1.0	WHAT IS THE NAME OF THIS UTILITY?	_____
2.0	WHAT IS THE STATUS OF THE CONSIDERATION AND DETERMINATION PROCESS FOR THIS STANDARD? (Refer to the Status of Consideration and Determination Process Codes found in the Instructions.)	(1) ☐ 1 (5) ☐ 5 (2) ☐ 2 (6) ☐ 6 (3) ☐ 3 (7) ☐ 7 (4) ☐ 4 (8) ☐ 8

NOTE: (1) If you checked status 1 or 2 in question 2.0 above, you do not complete this form.
(2) If you checked status 3 to 8 in question 2.0 above, answer 3.0.

3.0	WHAT ARE THE SOURCES THAT SUPPLIED THE DATA AND INFORMATION DURING THE HEARING FOR THIS STANDARD? (Check all that apply. Under items (1), (2), (6) and (7), give the specific source(s). For item (4), indicate the number of consumers by class.)	(1) ☐ Another State Agency (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (2) ☐ Federal Government (a) _____ (b) _____ (c) _____ (d) _____ (e) _____

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

3.0 SOURCES (cont.)

(3) ☐ Staff of State Regulatory Authority (or covered nonregulated utility)

(4) ☐ Consumer(s) within class(es) of utility

Class	Number of Consumers
(a) Residential	
(b) Commercial	
(c) Industrial	
(d)	
(e)	

(5) ☐ Utility representative

(6) ☐ Public interest groups which are different from the consumer class(es)

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(7) ☐ Other (specify):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

ERA-166B
(3-79)

OMB No.

SCHEDULE ___

4.0 HAS A STAFF REPORT BEEN PREPARED?

(a) ☐ Yes....attach a bibliography of reports, periodicals, computer programs and other data and information utilized in its preparation

(b) ☐ No

5.0 IS THERE ADDITIONAL INFORMATION OR DATA REQUIRED TO FULLY EVALUATE THE STANDARD DURING THE CONSIDERATION PROCESS?

(a) ☐ Yes....answer 6.0

(b) ☐ No.....skip to the instruction box located after 7.0

6.0 IS THIS INFORMATION OR DATA AVAILABLE?

(a) ☐ Yes....skip to the instruction box located after 7.0

(b) ☐ No.....answer 7.0

7.0 EXPLAIN WHAT TYPE OF INFORMATION OR DATA THIS IS AND WHY IT IS UNAVAILABLE.

_____

_____

_____

_____

_____

NOTE: (1) If you checked Status 3 in question 2.0, skip to 18.0

(2) If you checked Status 4 to 8 in question 2.0, answer 8.0.

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

8.0 WHAT IS THE ANTICIPATED COST IMPACT OVER THE NEXT TEN YEARS RESULTING FROM THE IMPLEMENTATION OF THIS STANDARD? (Yearly, if available, or total for ten year period)

Line No.	Year	Impact on Utility	Impact on State Regulatory Authority (if applicable)
	(a)	(b)	(c)
(1)	1979	$	$
(2)	1980	$	$
(3)	1981	$	$
(4)	1982	$	$
(5)	1983	$	$
(6)	1984	$	$
(7)	1985	$	$
(8)	1986	$	$
(9)	1987	$	$
(10)	1988	$	$
(11)	1989	$	$
(12)	Total	$	$

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

9.0 WHAT IS THE ANTICIPATED SAVINGS OVER THE NEXT TEN YEARS RESULTING FROM IMPLEMENTATION OF THIS STANDARD? (Yearly, if available, or total for ten year period)

Line No.	Year	Impact on Utility	Impact on State Regulatory Authority (if applicable)
	(a)	(b)	(c)
(1)	1979	$	$
(2)	1980	$	$
(3)	1981	$	$
(4)	1982	$	$
(5)	1983	$	$
(6)	1984	$	$
(7)	1985	$	$
(8)	1986	$	$
(9)	1987	$	$
(10)	1988	$	$
(11)	1989	$	$
(12)	Total	$	$

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

10.0 WHAT IS THE APPROPRIATENESS OF THIS STANDARD IN CARRYING OUT THE THREE PURPOSES OF PURPA?

10.1 Conservation of energy supplied by gas utilities,
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

10.2 Optimization of the efficiency of use of facilities and resources by gas utility system, and
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

10.3 Equitable rates to gas consumers of natural gas.
- (1) ☐ Positive effect
- (2) ☐ Negative effect
- (3) ☐ No effect

NOTE: (1) If you checked Status 4 in question 2.0, skip to 18.0

(2) If you checked Status 5 to 8 in question 2.0, answer 11.0.

11.0 WHAT ARE THE FACTORS, OTHER THAN THE THREE PURPOSES OF PURPA, THAT CONTRIBUTED SIGNIFICANTLY TO THE DECISION TO EITHER IMPLEMENT OR NOT IMPLEMENT THIS STANDARD? (Check all that apply. For items (7), (8) and (9), list the specific factors. For items (10) and (11), explain as appropriate.)
- (1) ☐ Understandability and simplicity of application
- (2) ☐ Feasibility of application
- (3) ☐ Public acceptability
- (4) ☐ Revenue adequacy
- (5) ☐ Revenue stability from year to year
- (6) ☐ Fairness of specific rates in apportioning total cost of service among consumers
- (7) ☐ State laws or regulations
  - (a) _____
  - (b) _____
  - (c) _____
  - (d) _____
  - (e) _____

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

11.0 FACTORS (cont)
- (8) ☐ Federal laws or regulations
  - (a) _____
  - (b) _____
  - (c) _____
  - (d) _____
  - (e) _____
- (9) ☐ Court decisions
  - (a) _____
  - (b) _____
  - (c) _____
  - (d) _____
  - (e) _____
- (10) ☐ Impact on another PURPA standard
  _____
  _____
  _____
  _____
  _____
- (11) ☐ Insufficient data or information
  _____
  _____
  _____
  _____

ERA-166 B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

12.0 WHAT IS THE ORDER THAT WAS ISSUED TO JUSTIFY EITHER IMPLEMENTING OR NOT IMPLEMENTING THIS STANDARD? (Attach as an appendix a copy of this order.)

13.0 WHAT IS THE METHOD OF IMPLEMENTING THIS STANDARD? (Check only one. For items (2), (3), (4) and (6), provide an explanation. For items (5) and (6), indicate to which class(es) of consumer this standard applies. For item (7), specify the method used.)

(1) ☐ Full (mandatory)

(2) ☐ Full (voluntary)

(3) ☐ Phased (mandatory)

(4) ☐ Phased (voluntary)

ERA-166 B
(3-79)

Form Approved
OMB No.

SCHEDULE _ _

13.0 METHOD (cont.)

(5) ☐ Partial (mandatory)
- (a) ☐ Residential
- (b) ☐ Commercial
- (c) ☐ Industrial
- (d) ☐ Other (specify)

(6) ☐ Partial (voluntary)
- (a) ☐ Residential
- (b) ☐ Commercial
- (c) ☐ Industrial
- (d) ☐ Other (specify)

(7) ☐ Other (specify):

ERA-166B
(3-79)

Form Approved
OMB No.

SCHEDULE ___

NOTE: (1) If you checked Status 5 to 7 in question 2.0, skip to 18.0

(2) If you checked Status 8 in question 2.0, answer 14.0.

14.0 WHAT ARE THE METHODS USED OR TO BE USED TO MONITOR THE IMPACT OF IMPLEMENTING THIS STANDARD? (Check all that apply.)

(1) ☐ Consumer questionnaires.
(2) ☐ Followup public hearings.
(3) ☐ System load factor changes.
(4) ☐ System load curve changes.
(5) ☐ Class load changes.
(6) ☐ Revenue levels and rate of return.
(7) ☐ Fuel mix changes.
(8) ☐ Other (specify): _____

_____
_____
_____

15.0 HOW LONG HAS THIS STANDARD BEEN IMPLEMENTED (ACTUALLY UTILIZED BY UTILITY)?

(1) Number of Years: _____
(2) Number of Months: _____

16.0 DURING IMPLEMENTATION OF THIS STANDARD, DID ANY SERIOUS AND UNANTICIPATED PROBLEMS ARISE?

(1) ☐ Yes....answer 17.0
(2) ☐ No.....skip to 18.0

17.0 WHAT WERE THESE SERIOUS AND UNANTICIPATED PROBLEMS, AND WHAT DID YOU DO TO REMEDY THEM?

_____
_____
_____
_____
_____

(3-79) SCHEDULE 2

Form Approved
OMB No.

(1 of 2)

18.0 Have you considered and/or adopted a definition of political and promotional advertising items?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.1 Political Advertising which:	X	X	X	X
18.11 Influences public opinion with respect to legislative matters				
18.12 Influences public opinion with respect to administrative matters				
18.13 Influences public opinion with respect to electoral matters				
18.14 Influences public opinion with respect to any controversial issue of public importance				
18.15 Other, specify:				
19.2 Promotional Advertising which:	X	X	X	X
19.21 Encourages selection or use of service or additional service				
19.22 Encourages selection or installation of any appliance or equipment designed to use such service				
19.23 Promotes the use of energy efficient appliances, equipment or services				
19.24 Other, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 2 (Continued) Form Approved OMB No. (2 of 2)

20.0 Have you considered and/or adopted a policy on recovering political and promotional advertising expenses?	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
20.1 Political Advertising Expenses From:	X	X	X	X
20.11 Ratepayers				
20.12 Shareholders				
20.13 Other, specify:				
20.2 Promotional Advertising Expenses From:	X	X	X	X
20.21 Ratepayers				
20.22 Shareholders				
20.23 Other owners, specify:				

Enter any additional comments here:

(3-79) SCHEDULE 3 Form Approved OMB No. (1 of 7)

18.0 Have you considered and/or adopted a policy requiring prior notice of termination be given to a consumer which includes:	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
18.1 Method of Issuing Notice(s)	X	X	X	X
18.11 Mail				
18.12 Telephone				
18.13 Personal Visit				
18.14 Other, specify:				
18.2 Number of Notices Issued	X	X	X	X
18.21 1				
18.22 2-3				
18.23 4 or more				
18.24 **Varies**				
18.3 Number of Days First Notice Issued Prior to Termination Date	X	X	X	X
18.31 1-7				
18.32 8-21				
18.33 22 or more				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (2 of 7)

18.4 Number of Days Last Notice Issued Prior to Termination Date (if more than one notice is issued)	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
18.41 Same Day				
18.42 1-7				
18.43 8 or more				
18.5 Methods of Issuing Final Notice	X	X	X	X
18.51 Mail				
18.52 Telephone				
18.53 Personal Visit				
18.54 Varies				
18.55 Other, specify:				
18.6 Notification to Occupants of Master Metered Building if service is to be shut off				
18.7 Third Party Notification Procedure	X	X	X	X
18.71 Customer Designated Third Party				
18.72 Utility Company Designated Third Party				
18.8 Special Notification to Elderly and Handicapped Consumers (Explain):_____				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (3 of 7)

19.0 Have you considered and/or adopted a policy requiring the utility to provide a notice of rights and remedies to the consumer?	Considered		Adopted	
	Yes (a)	No (b)	Yes (c)	No (d)
19.1 Methods of Issuing Notice of Rights and Remedies	X	X	X	X
19.11 Included in Notice of Termination	X	X	X	X
(1) First Notice of Termination Only				
(2) Last Notice Only (if more than one notice is given)				
(3) Each Notice				
19.12 Separate Mailing				
19.13 Other, specify:				
19.2 Content of Notice of Rights and Remedies	X	X	X	X
19.21 Procedures for Handling Disputes	X	X	X	X
(1) Informal Conference with Utility				
(2) Hearing Before Regulatory Authority				
(3) Filing of Injunction of Suit				
(4) Other, specify:				
19.3 Repayment Information	X	X	X	X
19.31 Details of Installment Plan(s)				
19.32 List of Public and Private Sources of Consumer Financial Assistance				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (4 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
19.3	Details of Installment Plan(s) Continued				
19.33	Procedures for Tenants to Repay Landlord Debt				
19.4	Procedures for Occupants of Master Metered Building to Prevent Termination of Service if Landlord Fails to Pay				
19.5	Special Provisions for Elderly and Handicapped Consumers (Explain): _____ _____ _____ _____ _____				
		Considered		Adopted	
20.0	Have You Considered and/or Adopted Working Definitions for the Following?	Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.1	Consumer Health Dangers Which Include:	X	X	X	X
20.11	Weather Factors	X	X	X	X
	(1) Winter Months				
	(2) Summer Months				
	(3) Outdoor Temperature Outside Tolerable Range				
20.12	Health of Individual Consumer (no Doctor's Certificate Required)	X	X	X	X
	(1) Prior to Termination of Service				
	(2) Expected as a Result of Termination of Service				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (5 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.13	Health of Individual Consumer (Doctor's Certificate Required)				
	(1) Prior to Termination of Service				
	(2) Expected as a Result of Termination of Service				
20.14	The Age of the Consumer				
20.15	Other, specify:				
20.2	Consumer Ability to Pay	X	X	X	X
20.21	General Status	X	X	X	X
	(1) Total Lack of Resources to Pay the Bill				
	(2) Resources Sufficient to Pay in Installments Only				
20.22	Criteria for Assessing Status	X	X	X	X
	(1) Family Income Below Established Poverty Level				
	(2) Availability of Public Assistance				
	(3) Credit Investigation				
	(4) Age of Consumer				
	(5) Health of Consumer				
	(6) Other, specify:				

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (6 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
20.22	Criteria for Assessing Status (Continued)				
20.3	Elderly Consumer, specify:				
20.4	Handicapped Consumer, specify:				
21.0	Have you considered and/or adopted a policy which prohibits termination of service when:	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
21.1	Consumer has disputed reasons for termination and matter has not been resolved. Specify consumer class_____.				
21.2	Consumer has not received reasonable prior notice (including notice of rights and remedies). Specify consumer class _____.				
21.3	Consumer has not had a reasonable opportunity to dispute the reasons for termination. Specify consumer class _____.				
21.4	Consumer Health Danger Exists and:	X	X	X	X
21.41	Consumer is unable to pay in accordance with requirements of utility's billing. Specify consumer class _____.				
21.42	Consumer can only afford to pay in installments. Specify consumer class _____.				
22.0	Have you considered and/or adopted a method of recovering lost revenue?	Considered Yes (a)	Considered No (b)	Adopted Yes (c)	Adopted No (d)
22.1	From Within Affected Class				
22.2	From Other Consumer Classes				

[Docket No. ERA-R-79-19]

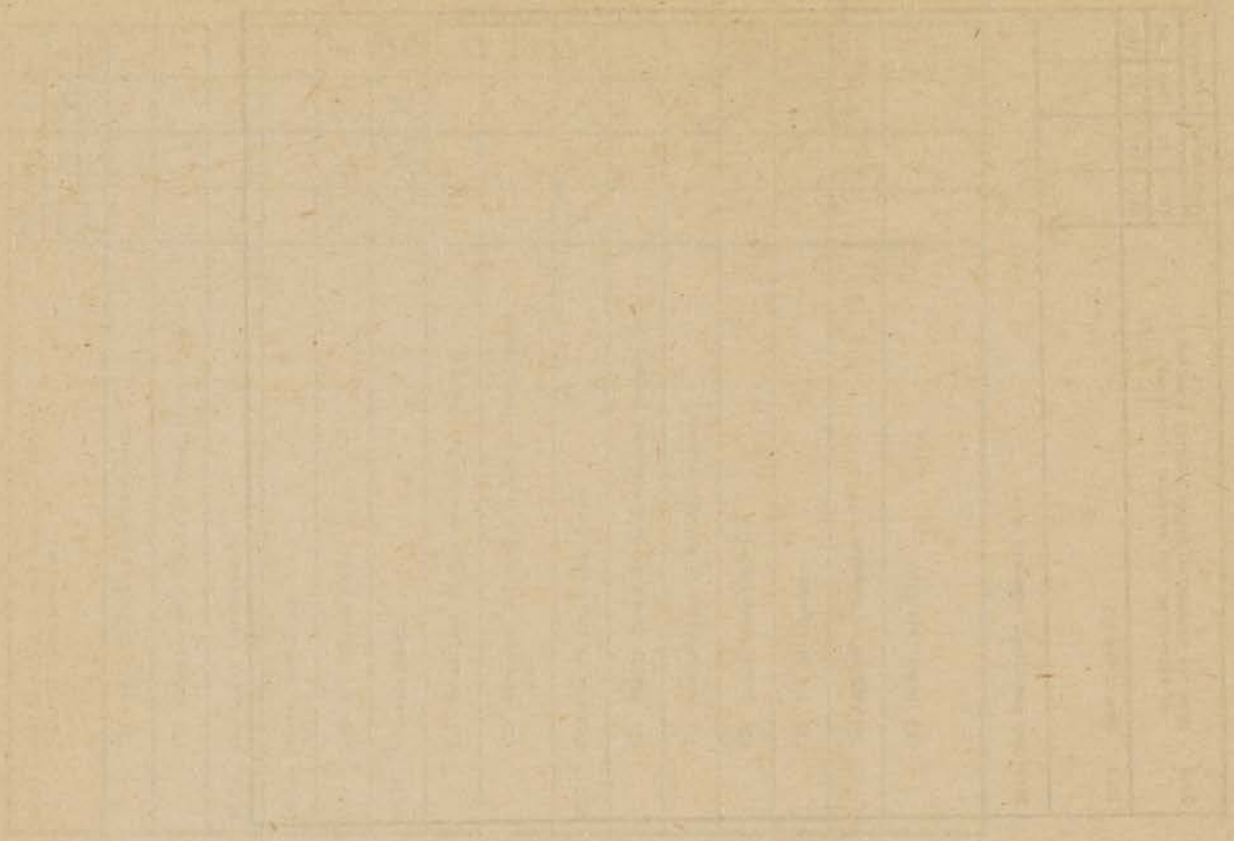
[FR Doc. 79-11854 Filed 4-12-79; 11:51 am]

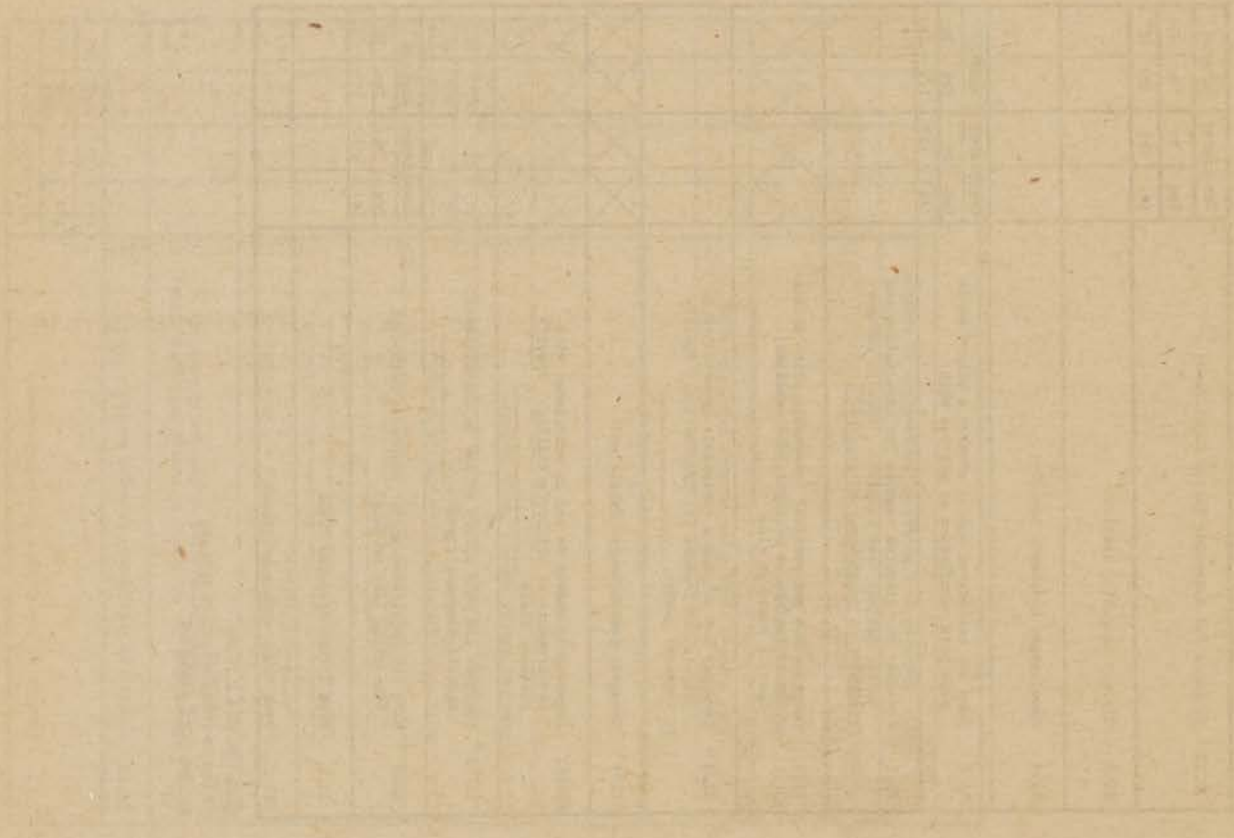
BILLING CODE 6450-01-C

(3-79) SCHEDULE 3 (Continued) Form Approved OMB No. (7 of 7)

		Considered		Adopted	
		Yes	No	Yes	No
		(a)	(b)	(c)	(d)
22.0	Have you considered and/or adopted a method of recovering lost revenue? (Continued)				
22.3	Other, specify:				

Enter any additional comments here:





federal register

Tuesday
April 17, 1979

Part V

Department of Health, Education, and Welfare

Food and Drug Administration

Reimbursement For Participation In Administrative Proceedings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 10]

Reimbursement for Participation in Administrative Proceedings

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: This document proposes a demonstration program for providing financial assistance to participants in certain administrative proceedings of the Food and Drug Administration (FDA). The agency invites public comment (1) on whether a demonstration program providing financial assistance to participants in administrative proceedings, under appropriate circumstances, should be established, and (2) on the applicable scope, criteria, and procedures for such a program. The program would be established to determine whether the process of administrative decisionmaking will be enhanced by reimbursing participants whose participation in agency proceedings contributes or can reasonably be expected to contribute to a full and fair determination of the issues, but who would otherwise be unable to participate effectively.

DATES: Comments by June 18, 1979; the proposed effective date of a final rule based on this proposal is 30 days after date of publication of the final rule in the Federal Register.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alexander Grant, Office of Consumer Affairs (HF-7), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1547.

SUPPLEMENTARY INFORMATION:

I. General Background

On August 25, 1976 (41 FR 35855), FDA issued an advance notice of proposed rulemaking concerning agency payment of participants in administrative proceedings. In that notice, the agency set forth in full a petition submitted by Consumers Union containing both a specific proposal and a narrative justification.

Consumers Union proposed that FDA provide reimbursement for attorneys' fees, expert witness fees, and other reasonable costs incurred by public interest representatives who participate in agency proceedings when a participant "represents an interest the representation of which contributes or can reasonably be expected to contribute substantially to a fair determination of the proceedings, taking into account the number and complexity of the issues presented, the importance of public participation, and the need for representation of a fair balance of interests." The proposal would have permitted funding not only of a participant who is indigent by conventional standards, but also of a nonindigent participant whose economic interest in a proceeding is small compared to the cost of participation.

II. Comments on the Advance Notice of Proposed Rulemaking

FDA invited public comment on general issues relating to the advisability of the proposal and on 13 specific areas of interest raised by the Consumers Union petition. One hundred fifty-five comments on the proposal were submitted, of which 31 supported and 124 opposed the proposal. The agency will respond to these comments, as well as comments on the current proposal, should a final regulation be published.

The most important argument advanced by supporters of the proposal was that consumers are not now represented adequately before Federal agencies, including FDA. Supporters of the proposal contended that regulated industries dominate the regulatory process: Only manufacturers can afford effective representation, and on any given question agencies tend to adopt the industry point of view, which is the only one the agencies hear.

Many comments mentioned the high cost of participation in administrative hearings, especially if scientific or technical testimony is involved. The Consumers Union proposal, according to its supporters, is vital to restore balance to the administrative process by providing equal access to persons or groups who can effectively represent consumers.

One comment quoted at length statements by Judge Harold Leventhal of the United States Court of Appeals for the District of Columbia Circuit and William Ruckelshaus, former Administrator of the Environmental Protection Agency, testifying to the skill of the public interest lawyers who practiced before them, and the usefulness of the information and insights these lawyers and their witnesses provided. This comment also cited two specific FDA proceedings (involving hearing aids and generic drugs) in which the Health Research Group, a public interest organization, could have made similar contributions but was prevented from doing so by lack of funds.

In sum, numerous comments concluded that adoption of the Consumers Union proposal would lead to better, more informed decisionmaking by FDA and thereby benefit everyone.

The argument raised most frequently by opponents of the proposal was that the "public interest groups" that would receive money under the Consumers Union scheme do not represent either the "public interest" or the majority of consumers. Many comments characterized certain advocates as "self-appointed" leaders, representing not broad, but narrow, special interests, who would not be accountable to anyone for their use of tax money. Some comments added that groups whose views generally command widespread support should be able to raise enough money to support participation in agency proceedings.

Some comments argued that the proposal would encourage frivolous litigation—that lawyers would intervene in agency proceedings only to obtain the fees. Others thought the Federal government already did, or should, represent the public interest and that any additional expenditures should be used to improve the government's efforts rather than to duplicate them. Another argument contended that the proposal would be too expensive—contribute to inflation, impose an additional burden on taxpayers, and deplete the FDA budget.

A smaller number of comments made additional arguments. Some mentioned the potential administrative difficulties FDA would encounter in implementing the Consumers Union proposal or any similar proposal, particularly when the agency would have to choose who best represents the "public interest." Other comment contended that citizens do not need, or ought not use, expensive legal help, but instead can, and should, represent themselves by writing letters and employing other means of influencing governmental decisionmaking. Some comments also suggested that alternative schemes may be more appropriate or effective.

III. Congressional Developments

The Senate Governmental Affairs Committee recently examined public participation in regulatory agency proceedings, including rulemaking and

adjudicatory proceedings before FDA. The Committee issued a report entitled "Study on Federal Regulation," which recommends that Congress "enact legislation authorizing agencies to provide compensation to eligible persons for costs incurred in participating in agency rulemaking, licensing and certain other proceedings" (S. Doc. No. 95–71, 95th Cong., 1st Sess. 118 (1977)). The Committee further recommended that "[u]ntil such time as general legislation for compensation of public participation costs is enacted, regulatory agencies should implement their own programs to compensate eligible participants in agency proceedings as appropriate" (id. at 118–19). The Commission on Law and the Economy of the American Bar Association (ABA) has also taken the position that Congress should appropriate funds for the payment of attorneys' fees and other expenses, under proper limitation and controls, in administrative proceedings and in judicial review of such proceedings (ABA Commission on Law and the Economy, "Federal Regulation: Road to Reform," p. 125, 1978).

Legislative proposals to pay the costs of participants who appear before Federal agencies have been introduced in Congress in recent years. At least twice these proposals have passed as part of new regulatory legislation. The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) includes in section 6 (15 U.S.C. 2605(c)(4)) a provision closely analogous to the Consumers Union proposal. The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. 57a, has a general provision that permits reimbursement of "any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination * * * and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay [the] cost * * *" (15 U.S.C. 57a(h)(1)). (A comparable reimbursement provision was deleted by the Conference Committee from the Energy Reorganization Act of 1974, Pub. L. 93–438; H. Rep. 93–1445, 93d Cong., 2d Sess. 37 (1974)). The State Department has also received explicit authority from Congress to establish a reimbursement program in the Foreign Relations Authorization Act, 22 U.S.C. 2692.

Several legislative initiatives, such as S. 270 and H.R. 8798, introduced in the first session of the 95th Congress, would have specifically authorized all Federal agencies to reimburse participants in administrative proceedings, and would have provided guidance for the exercise of that authority. If this or similar legislation is enacted in the 96th Congress, FDA's current proposal will become even more appropriate because the reimbursement regulation will be necessary to implement the new legislation. FDA believes, however, that adequate authority exists under current law, without such legislation, to establish a demonstration program, whose full implementation might have to await special funding.

The Report of the House of Representatives' Appropriations Committee on FDA's 1979 budget expressly provided that "there are no funds in the [appropriations] bill for payment of such attorney fees" (H. Rep. 95–1290, 95th Cong., 2d Sess. 101 (1978)). Section 613, which expressly prohibited the payment of expenses of parties intervening in agency regulatory proceedings, and was applicable to all agencies funded in the bill, including FDA, was added to the House version of the appropriations bill. The Report of the Senate Appropriations Committee on FDA's 1979 budget recommended deletion of section 613 (S. Rep. No. 95–1058, 95th Cong., 2d Sess. 84 (1978)). Thereafter, the House-Senate Conference Committee deleted section 613 (H. Rep. 95–1579, 95th Cong., 2d Sess. 29 (1978)). The House-Senate Conference Committee Report provided that:

> Any public participation program utilizing funds provide in this act shall not be operated until the Department or agency has promulgated regulations that comply with the Comptroller General's rulings on the matter. Furthermore, except for expert witnesses whose technical expertise is required, no applicant shall be eligible to receive reimbursement if he is not a resident of the locality to be affected, or if the interest he seeks to represent is already adequately represented by the Department or another participant. [Id. at 29.]

The Agriculture, Rural Development, and Related Agencies Bill, which contains FDA's appropriations for Fiscal Year 1979, was enacted into law on October 11, 1978 (Pub. L. 95–448). Thus, FDA has been authorized by Congress to establish a program for the reimbursement of public participants in its regulatory hearings under the conditions specified above (see Part V of this preamble, below).

IV. Agency Developments

Meanwhile, many other Federal agencies have acted on their own initiative to enlarge opportunities for public participation. Some have established reimbursement programs, while others have published proposals for comment.

The Department of Transportation (DOT) issued in the **Federal Register** of January 13, 1977 (42 FR 2864) an advance notice of proposed rulemaking for a reimbursement program, and in the same notice established a one-year demonstration program in the National Highway Traffic Safety Administration (NHTSA). NHTSA has evaluated its demonstration program and found that it "improved NHTSA rulemaking by providing decisionmakers with a wider understanding of the social, economic, environmental, political, and intellectual interests involved in their decisions." (A copy of the "National Highway Traffic Safety Administration's Evaluations and Recommendations" (1978) is on file with the Hearing Clerk, FDA.) The pilot effort is still in effect, and DOT is considering department-wide expansion of its reimbursement program.

The National Oceanic and Atmospheric Administration (NOAA) issued in the **Federal Register** of April 26, 1978 (43 FR 17806) a final regulation that provides for reimbursement of public participants in any NOAA proceeding involving a hearing in which public participation is authorized by statute, regulation, or agency practice.

The Consumer Product Safety Commission (CPSC) strongly favors a program for compensating public interest participants. In the **Federal Register** of March 23, 1977 (42 FR 15711), CPSC issued a proposed regulation that would provide financial assistance for participants in all informal notice and comment rulemaking proceedings of the agency. Rather than promulgate a final regulation, CPSC issued an interim regulation in the **Federal Register** of May 31, 1978 (43 FR 23560) that establishes a temporary program for funding participants in selected proceedings.

The Environmental Protection Agency (EPA), which has had substantial experience with environmental public interest groups, went on record as favoring the general principle of providing reimbursement to public participants in its advance notice of proposed rulemaking issued on January 7, 1977 (42 FR 1492). In the **Federal Register** of November 30, 1977 (42 FR 60911), EPA deferred action on establishing a general program of funding public participation in regulatory proceedings and instead issued a temporary rule providing for reimbursement of public participants in rulemaking under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605).

Such compensation is expressly authorized by that statute.

The Federal Trade Commission (FTC) issued guidelines in the **Federal Register** of June 14, 1977 (42 FR 30460) describing procedures for reimbursement of public participants in Magnuson-Moss rulemaking proceedings, as expressly authorized by the Magnuson-Moss Warranty Act.

The Civil Aeronautics Board (CAB) issued a final regulation in the **Federal Register** of December 5, 1978 (43 FR 56878) establishing a one-year demonstration program for reimbursement for the cost of participation in CAB proceedings.

The Federal Communications Commission (FCC) currently provides some assistance to public participants, such as reduction of multiple copying requirements (see 41 FR 50399, November 16, 1976), but has yet to establish a reimbursement program. In the **Federal Register** of July 18, 1978 (43 FR 30834), FCC issued a notice of inquiry that does not take a position on the issue of reimbursement, but discusses the issue and solicits comments on whether a reimbursement program should be established, whether FCC has authority for such a program, and the form such a program might take.

The Nuclear Regulatory Commission (NRC) decided, on the basis of a February 19, 1976 opinion of the Comptroller General (Decision B–92288) and a study that it commissioned, that the agency could justify publicly funded participation in only one proceeding, the rulemaking on plutonium recycle (41 FR 50829, Nov. 18, 1976).

In the **Federal Register** of May 22, 1978 (43 FR 21986), the United States Department of Agriculture (USDA) issued a notice on improvement of regulations. A section of the notice, entitled "Encouraging Public Participation," provides that "agencies [of USDA] are encouraged to use several means to obtain the greatest possible public input," one of which is "financial aid for costs incurred in presenting views" (43 FR 21987).

V. FDA Authority

FDA believes that the Consumers Union petition correctly assessed FDA's authority to establish a program of financial assistance for public interest participants (see the August 25, 1976 advance notice at 41 FR 35855 through 35859). FDA agrees with the petition's conclusion that authority to compensate participants "is inherent in FDA's broad regulatory powers [and] its Congressionally mandated hearing procedure" (41 FR 35859). Authority also exists under FDA's annual appropriations legislation.

After publishing the advance notice of proposed rulemaking, FDA sought the advice of the Comptroller General regarding the agency's authority to compensate participants in agency proceedings. In his response (Decision B–139703, December 3, 1976), the Comptroller General stated unequivocally that FDA does have the authority, under current law, to pay the costs of certain participants in its proceedings. (A copy of the Comptroller General's decision is on file with the Hearing Clerk, FDA.) As discussed above, the House-Senate Conference Report confirms the Comptroller General's ruling as to FDA's authority and provides that any reimbursement program established by the agency shall not be operated until final regulations complying with all of the Comptroller General's rulings on the matter are promulgated.

The Comptroller General has issued a series of opinions interpreting a number of other statutes that contain language virtually identical to that of the Federal Food, Drug, and Cosmetic Act and FDA's annual appropriations acts. [A copy of each of these opinions is on file with the Hearing Clerk.] In each of these opinions, which are discussed below, the Comptroller General has ruled that the statute in question authorizes reimbursement of public participants under certain conditions.

In 1972, in a letter to the FTC Chairman, the Comptroller General ruled that FTC has authority to pay certain expenses incurred by indigent respondents and intervenors appearing before FTC in adjudicatory proceedings (file No. B–139703, July 24, 1972). The Comptroller General noted:

> The appropriations for the Commission are normally available for "necessary expenses." While the Commission submits budgets to the Congress prior to the passage of the appropriation acts, the appropriations are enacted in the form of lump sums with no specific limitations as to use. Thus, the determination of what constitutes "necessary expenses" is left to the reasonable discretion of the Commission. [Id. at 2.]

FTC's authority to compensate public participants was clarified in a July 31, 1978 decision of the Comptroller General (file No. B–139703, July 31, 1978). The Comptroller General ruled that FTC's payment of an amount in excess of the costs actually incurred by a public participant for legal services is not authorized, even though the participant utilized "house counsel" whose rate of pay is lower than prevailing rates.

In February 1976, in response to a request of the Nuclear Regulatory Commission (NRC), the Comptroller General determined that NRC's payment of public participants could be considered "necessary expenses" within the discretion accorded NRC in carrying out its statutory function. The Comptroller General remarked:

> While 31 U.S.C. 628 (1970) prohibits agencies from using appropriated funds except for the purposes for which the appropriation was made, we have long held that where an appropriation is made for a particular object, purpose, or program, it is available for expenses which are reasonably necessary and proper or incidental to the execution of the object, purpose or program for which the appropriation was made, except as to expenditures in contravention of law or for some purpose for which other appropriations are made specifically available.
>
> * * * * *
>
> In view of the above, if the NRC in the exercise of its administrative discretion, determines that it cannot make the required determination unless it extends financial assistance to certain interested parties who require it, and whose participation is essential to dispose of the matter before it, we would not object to use of its appropriated funds for this purpose. [Decision B–92288, February 19, 1976, pp. 3–4.]

The basic eligibility criteria for reimbursement of public participants were set forth in a May 10, 1976 letter from the Comptroller General to the Chairman of the Oversight and Investigations Subcommittee of the House Committee on Interstate and Foreign Commerce (File No. B–180224, May 10, 1976). In the letter, the Comptroller General stated that participants could be reimbursed from appropriated funds if the agency found that:

> * * * it cannot make the required detertmination unless it extends financial assistance to certain interested parties who require it, and whose representation is necessary to dispose of the matter before it; and * * * the party is indigent or otherwise unable to finance its participation. [Id. at 2.]

In a letter dated September 22, 1976 to Congresswoman Yvonne Braithwaite Burke concerning FCC (File No. 139703, September 22, 1976), the Comptroller General elaborated upon these eligibility criteria:

> As indicated in our decisions, the prerequisite to such payments is a determination by the agency that the payments are "necessary" to the accomplishment of its functions. Certainly this would include obtaining presentations or other forms of participation which enable the full and fair resolution of the matters before the Commission. However, we would emphasize that our decisions are limited to

situations in which the payment, as well as the participation, is necessary; that is, lack of financial resources on the part of the person involved would preclude participation without reimbursement. Accordingly, the Commission must determine that both the participation itself and payment therefor are necessary. In the absence of relevant statutory standards, we believe that the Commission must be accorded considerable discretion in making these determinations. [Id. at 3–4.]

In the same letter, the Comptroller General further stated that FCC has authority to reimburse participants for all expenses, including witness fees, attorneys' fees, and related travel and preparation expenses, which are reasonable and necessary to obtain the required participation (id. at 2). The Comptroller General further remarked that although advance payments to participants are prohibited by statute (31 U.S.C. 529), participants may be reimbursed as participation is actually accomplished before the close of the FCC proceeding (id. at 4).

In 1976, Sherwin Gardner, then FDA's Acting Commissioner, requested a ruling from the Comptroller General with respect to the reimbursement program proposed in the Consumers Union petition. In holding that FDA does have authority to establish a reimbursement program, the Comptroller General explained and modified his prior rulings on the subject:

> While our decision to NRC did refer to participation being "essential," we did not intend to imply that participation must be absolutely indispensable. * * * [I]t would be sufficient if an agency determines that a particular expenditure for participation "can reasonably be expected to contribute substantially to a full and fair determination of" the issues before it, even though the expenditure may not be "essential" in the sense that the issues cannot be decided at all without such participation. Our previous decisions may be considered modified to this extent. [Decision B-139703, December 3, 1976, p. 5.]

The Comptroller General further stated that although there is no legal objection to the standard proposed by Consumers Union, "it is the agency that must determine whether the standard has been met in particular cases, and the agency has considerable discretion in this regard" (id. at 5).

With respect to the financial eligibiity criteria proposed by Consumers Union, the Comptroller General ruled that "a regulatory agency may not pay costs of a party requesting to participate in a regulatory agency proceeding unless the agency first determines that the party is indigent or otherwise unable to finance its participation" (id. at 6).

The Comptroller General rejected and alternative financial eligibility criterion proposed in the Consumers Union petition, which would have permitted reimbursement for participants who have the financial resources to participate but whose "economic interest * * * in the outcome of the proceeding is small in comparison to the costs of effective participation in the proceeding." The Comptroller General ruled that "FDA may not extend financial assistance to a party * * * which has the financial resources to participate but does not, *for whatever reasons,* wish to use its resources for this purpose" (id. at 6, emphasis added).

The Comptroller General also ruled that FDA could provide financial assistance for participation in any rulemaking or adjudicatory proceeding, including public hearings before a public advisory committee.

The Comptroller General's determination regarding FDA's authority rests upon the fact that "payments to parties and participants in agency proceedings may be considered 'necessary expenses' within the discretion accorded the [FDA] in carrying out its statutory functions" (id. at 2). This year's appropriations legislation is typical in that it provides funds "for necessary expenses, not otherwise provided for, of the Food and Drug Administration" (Agriculture, Rural Development and Related Agencies Act, Pub. L. 95–448 (1978)). Thus, the agency is authorized to spend such funds on reimbursement of participants in agency proceedings insofar as such expenditures, by facilitating agency administrative decisionmaking, enable the agency to perform its statutorily mandated duty to protect the public health and safety. As discussed above, this interpretation of FDA's authority has been confirmed by the House-Senate Conference Committee, which expressly acknowledged FDA's authority to use its general appropriations to reimburse public participants even in the absence of specific authorizing language in its appropriations legislation.

VI. Judicial Developments

FDA is aware of the June 30, 1977 en banc decision of the United States Court of Appeals for the Second Circuit in *Greene County Planning Board* v. *Federal Power Commission,* 559 F. 2d 1227, 1237 (2d Cir. 1977) *en banc*), cert. denied, 98 S. Ct. 1280 (1978). The majority opinion, agreed to by four judges and concurred in by a fifth, modified an earlier opinion (559 F. 2d 1227, 1234 (2d Cir. 1976)) rendered by a three-judge panel of the Court of Appeals. The majority of the en banc Court of Appeals held that the Federal Power Commission (FPC) lacks statutory authority to award counsel fees and other expenses to participants in FPC proceedings. The Court defined the issue presented by the case as "whether this Court's interpretation of the Federal Power Act or that of the Comptroller General shall control the disposition of this appeal" and held that its own interpretation is controlling (id. at 1238). The Court rejected the Comptroller General's ruling that the FPC's statutory authority to expend appropriations for "expenses necessary for the work of the Commission" is sufficient to authorize reimbursement. The Court concluded that a "finding that the Federal Power Commission is empowered to reimburse intervenors for their legal expenses must await appropriate Congressional action" (id. at 1240). In so concluding, the court relied upon several cases that prohibit fee shifting between private litigants, as distinguished from fee reimbursements. Another important factor underlying the court's decision was the deference paid by the court to FPC's interpretation of its organic statute as not authorizing it to compensate public participants (id. at 1239 n. 2).

On September 27, 1977, the Greene County Planning Board petitioned the Supreme Court for certiorari (No. 77–481). The Federal Energy Regulatory Commission (FERC) succeeded FPC as a party to the litigation on October 1, 1977. FERC reversed FPC's earlier position and concluded that its governing statute does authorize reimbursement. On January 12, 1978, the Solicitor General filed a brief on behalf of FERC, urging the Supreme Court to remand the case to the Court of Appeals for reconsideration in light of FERC's recent conclusion as to its authority. However, on February 2, 1978, the Supreme Court denied the petition for certiorari without taking any position on the merits of the case.

In two letters, both dated March 1, 1978, the Department of Justice's Office of Legal Counsel advised the DOT and CAB that the *Greene County* decision does not preclude an agency "from determining whether its organic statutes and other relevant statutes permit some kind of compensation program to be established." At the request of Senators Strom Thurmond and James O. Eastland, the Attorney General reviewed the Office of Legal Counsel's March 1, 1978 opinion. In a letter to Senators Thurmond and Eastland, the Attorney General concurred with the opinion of the Office of Legal Counsel, noting that

"[t]he Second Circuit did not decide, indeed it had no jurisdiction to decide, whether other Federal agencies do or do not have statutory authority to make such payments."

In a recent judicial development, the United States District Court for the District of Columbia denied a motion for preliminary injunction that sought to enjoin the conduct of a study of the impact on consumers of proposed USDA regulations (*Chamber of Commerce of the U.S.* v. *U.S. Department of Agriculture*, C.A. No. 78–1515 (D.D.C. October 10, 1978)). The study was to be conducted by a public interest group with USDA funding. In finding that the plaintiffs were unlikely to prevail on the merits of their claim that USDA lacks authority to fund public participation in rulemaking proceedings, the Court stated:

> This Court does not quarrel with the statement in *Greene* that "[t]he authority of a Commission to disburse funds must come from Congress." * * * The Court does feel, however, that numerous authorities support the conclusion that agencies in general, and the USDA in particular, have the implied power voluntarily to fund the views of parties whose petition might otherwise go unrepresented. [Id. at 9, citations omitted.]

The court relied on the decision of the Comptroller General regarding NRC (Decision B–92288) and the March 1, 1978 opinion of the Office of Legal Counsel, Department of Justice, discussed above.

The FDA has fully considered the opinion in *Greene County* and concludes that the decision applies solely to the authority of FPC (now FERC). Thus, the Comptroller General's decisions and those of the Department of Justice remain the only pertinent legal opinions with respect to the authority of other Federal agencies, including FDA, to make payments to indigent participants in agency proceedings. The conclusion that FDA has implied authority to reimburse participants was also confirmed by the House-Senate Conference Committee Report, discussed above. Accordingly, FDA is of the opinion that there is a sound legal basis for the proposed regulation.

VII. The Proposed Regulation

The proposed reimbursement program is generally patterned on the pilot program instituted on January 13, 1977 by the DOT's National Highway Traffic Safety Administration. The final DOT regulations, published in the **Federal Register** of January 13, 1977 (42 FR 2864) and amendments to those regulations published in the **Federal Register** of January 23, 1979 (44 FR 4675), the regulations governing CAB's reimbursement program, published in the **Federal Register** of December 5, 1978 (43 FR 56878), and other published material relating to reimbursement of public participants in Federal agency proceedings are the sources of much of the specific language that appears in FDA's proposed regulations.

FDA emphasizes that it intends that the proposed program be a demonstration program, so that it will be administratively manageable and the agency will be able to evaluate its success closely. Thus, although the agency may fund participation in public hearings before a public board of inquiry (21 CFR Part 13), public hearings before a public advisory committee (21 CFR Part 14), public hearings before the Commissioner (21 CFR Part 15), and regulatory hearings before FDA (21 CFR Part 16), the agency intends to concentrate reimbursement awards on formal evidentiary public hearings conducted under Part 12 and on proceedings which by agreement of the parties are substitutes for formal hearings.

FDA intends to focus on formal evidentiary public hearings because many major issues of public concern are decided in these proceedings, because there may be a great diversity of views on the issues, and because participation in these proceedings, especially presentation of disputed factual issues for resolution, can be quite expensive. Presentation of the participant's case will usually entail preparation of written direct testimony, retention and preparation of witnesses, and conduct of cross-examination at the hearing. Furthermore, full-time attendance at the hearing by a legal representative will usually be necessary when oral testimony is being given by other participants in the proceeding so that the interest of the participant can be protected.

The FDA has decided to place less emphasis on funding Part 13, 14, 15, or 16 proceedings because the conduct of these types of proceedings ordinarily does not place as great a financial burden on a participant. In addition, regulatory hearings under Part 16 are held to afford an affected person an opportunity to challenge an adverse determination by FDA. The dispute is individualized, and the proceeding usually is not one in which others would participate.

Funding would not be available in those rulemaking proceedings that do not also involve proceedings under Part 12, 13, 14, 15, or 16. Reimbursement for those rulemaking proceedings has been excluded from the proposal because participation in those proceedings is generally in the form of written comments and is therefore less expensive than participation in the proceedings to be funded by the proposal. Because a question remains whether funding should be equally available for participation in all proceedings, the agency invites further comment on the type of proceedings for which compensation should be awarded.

A. The Decisionmaking Process

The proposal assigns to an Evaluation Board the authority to decide whether to provide reimbursement. Within the overall reimbursement budget established by the agency, the Board would make decisions on individual applications. The Evaluation Board would be composed of the Special Assistant for Consumer Affairs, or his or her representative, who would chair the Board, the Associate Commissioner for Management and Operations, or his or her representative, and a third person to be appointed by the Commissioner of Food and Drugs. Board members would be prohibited from involvement in any proceeding for which they are reviewing applications for reimbursement.

The Board would be free to consult with, and seek advice from, any agency employee, including the presiding officer in the proceeding for which reimbursement is being sought. The Board would also be able to communicate with the applicant. The Board would not, however, be permitted to consult ex parte with any agency employee who is involved in any way in the administrative proceeding for which reimbursement is being sought. All consultations between the Board and an applicant or the presiding officer concerning applications for reimbursement are required to be in writing, or, if oral, reduced to writing an filed with the Hearing Clerk, FDA. Like other participants in the proceeding, agency participants would have an opportunity to submit written views to the Board. Those views would be filed with the Hearing Clerk.

FDA proposes that the Special Assistant for Consumer Affairs, or his or her representative, chair the Board because that office has major responsibility for educating the public about the agency, maintains continuing contact with a broad spectrum of the public, and has considerable knowledge of potential public interest participants. FDA proposes to make the Associate Commissioner for Management and Operations, or his or her representative,

a member of the Board because of that office's expertise in financial matters. That expertise should aid the Board in evaluating each applicant's financial eligibility. A third member would be appointed by the Commissioner to strengthen the Board's ability to evaluate applicant's proposed participation and generally to facilitate decisionmaking.

The agency believes that decisions on reimbursement by the Board would have acceptability in the public interest community. The Board would have no role in deciding the outcome of hearings; consequently, its decisions on reimbursement could not be regarded as reflecting prejudgment.

As part of the decisionmaking process, the presiding officer would be required to make a written recommendation to the Board. This recommendation would be required to state whether the application meets all of the criteria for approval of applications except the criterion relating to the economic need of the applicant. Consideration of the "economic need" criterion was excluded from the presiding officer's recommendation because it would require expertise in financial matters that the presiding officer may not have.

The presiding officer would be able to communicate with the applicant and order the production of such documentation as he or she finds necessary. All of these communications would be required to be in writting or made a part of the official transcript of the proceeding for which reimbursement is being sought. Copies of all these communications and documentation would be filed with the Hearing Clerk, FDA.

Each participant in a proceeding under Part 12, 13, 14, or 16 in which reimbursement is being sought would be permitted to submit comments to the Board on each application submitted in that proceeding. The proposal does not provide for any comments by participants in proceedings under Part 15. FDA believes that provision for such comments is unwarranted because there are generally a large number of participants in Part 15 proceedings, each participant uses a relatively small amount of time, and the interest of participants in avoiding delay or limiting the number of participants is insufficient to justify their involvement in decisions on reimbursement.

The Board would give substantial weight to the recommendation of the presiding officer. The presiding officer is the neutral person with the greatest understanding of the issues in the proceeding and, therefore, is in the best position to evaluate the proposed contribution of an applicant seeking reimbursement. In the case of Part 12 proceedings in which the presiding officer is the agency's Administrative Law Judge, the presiding officer has had considerable experience in similar proceedings and therefore should be able to assess the contribution each applicant will make to a full and fair determination of the issues. If two or more applicants seek to represent similar interests, the presiding officer is especially qualified to compare the skills and experience of such applicants to determine which, if any, should receive reimbursement, particularly if the applicants have previously appeared before the presiding officer.

Participants in proceedings under Parts 12, 13, 14, and 16 shoud contribute to the decisionmaking process by providing information about whether an application should be denied because the applicant represents an interest that would be adequately represented by other participants in that proceeding.

All decisions of the Board would be considered final agency action. The proposal does not include a provision for appeal of the Board's final decision to the Commissioner because such a review procedure would result in delaying the proceedings for which funding is sought.

B. Content and Timing of Applications

The information requested from each applicant is intended to enable FDA to determine whether the applicant meets the eligibility criteria for reimbursement (see Part VII D. below). Each applicant is to submit an application that includes a sworn statement describing the applicant's general purposes, structure, and tax status (if the applicant is an organization), the work to be funded, the applicant's interest in the outcome of the proceeding, and why the applicant is an appropriate representative of that interest, and explaining how the applicant's participation would enhance the agency's decisionmaking process. The application is required to:

(1) State the total amount of funds requested, and, in itemized form, the expenses to be covered by the requested funds and by funds available to the applicant from other sources;

(2) Describe the position the applicant proposes to present, including a description of the evidence, activities, studies, or other submissions that will be generated by each of the expenditures;

(3) Explain why the applicant would be prevented from participating in the proceeding if reimbursement were not provided;

(4) Explain how providing the requested funds would enhance the quality of the applicant's participation and why the applicant cannot use funds that it already possesses or expects to receive for the purposes for which funds are requested;

(5) Explain why the applicant cannot in other ways obtain the funds that are requested, including a complete financial statement listing income and expenditures for the then current fiscal year and the prior fiscal year and a listing of the applicant's total assets and liabilities as of the date of application (where an applicant has previously submitted an application for the financial assistance in the preceding 6 months of the current fiscal year, the applicant need only inform the Board of any material changes in the financial data previously submitted);

(6) Describe any contracting, consulting or other income-producing relationship of the applicant with an organization having an economic interest in the outcome of the proceeding for which reimbursement is sought; and

(7) List all proceedings of the Federal government in which it has participated during the previous year and any amount of financial assistance received from the Federal government in connection with those proceedings (the information concerning other financial assistance received from the Federal government is requested to determine whether the applicant is receiving a disproportionate share of Federal reimbursement compared to other equally deserving applicants).

All applications for reimbursement would be filed with the Hearing Clerk and made available for public inspection. Other agencies, such as FTC, follow a similar procedure with applications for reimbursement. FDA recognizes that the possibility of disclosure of financial records of an applicant may be sensitive, and the agency invites further comment on such disclosure.

The proposal would require submission of applications to the Board within 25 calendar days of the date of **Federal Register** publication of the notice of hearing published under 21 CFR 12.35, 13.5, 14.20, or 15.20, or the date on which FDA sends the notice of opportunity for hearing issued under 21 CFR 16.22 or 16.24, except in extraordinary circumstances. Applications should be submitted as early as practicable. Early applications would be favored.

The applicant would have the additional responsibility of serving a copy of the application on the presiding officer and filing it with the Hearing Clerk. In Part 12, 13, 14, and 16 proceedings, the Hearing Clerk would be responsible for service of each application on each existing participant in the proceeding for which reimbursement is being sought within five days of the filing of each application.

The presiding officer would be required to submit a recommendation to the Board within 15 calendar days after receipt of each application in proceedings held under Part 13, 14, 15, or 16. In Part 12 proceedings, the presiding officer's recommendation would be submitted to the Board within seven calendar days after the first day of the prehearing conference conducted under § 12.91, or such other time as the presiding officer may specify. The Board's response to each applicant would be due 15 calendar days after its receipt of the presiding officer's recommendation. The presiding officer's recommendation and the Board's response to each applicant would be filed with the Hearing Clerk.

Participants in proceedings under Parts 13, 14, and 16 would be required to submit any comments they may have on applications for reimbursement to the Board within 15 calendar days after the application is filed with the Hearing Clerk. In Part 12 proceedings, participants' comments are to be submitted to the Board within seven calendar days after the first day of the prehearing conference conducted under § 12.91. All comments on applications would be filed with the Hearing Clerk.

All applicants in Part 12 proceedings would be required to attend the prehearing conference conducted under § 12.91.

This conference would be scheduled as soon as practicable after applications are due to be filed. Thus, the prehearing conference should provide a good forum for the preliminary review of applications by the presiding officer. Decisionmaking performed at this stage of the proceeding should be well informed. Information respecting the identity of the participants, the issues they propose to present, and the witnesses they propose to call is generally elicited in the prehearing conference.

It is important that all applicants attend the prehearing conference because additional information may at that time be elicited from the applicants by the presiding officer. With this information and the applicant's submission showing the contribution it intends to make, the presiding officer and the participants should be able to evaluate the merits of each application completely and accurately.

C. Final Decisions

The Board would be required to furnish a written response to each applicant stating the amount of reimbursement authorized (if any) and the reasons for the Board's decision. The application and approval process should operate expeditiously, and priority should be given to issuing final decisions as soon as practicable. To ensure that applicants have adequate preparation time, hearings held under Part 13, 14, 15, or 16 would not begin until at least 15 calendar days after the Board issues all final decisions on the approval of applications, except in extraordinary circumstances. In Part 12 proceedings, direct testimony would not be filed or taken under § 12.87 until at least 15 calendar days after the Board issues all final decisions on the approval of applications, except in extraordinary circumstances.

FDA believes that the 15 calendar days allotted to approved applicants to prepare their presentations is adequate preparation time. The presiding officer would have authority on his or her own initiative or on motion of any participant or applicant to extend this 15-calendar-day time period whenever an applicant needs additional preparation time. Similarly, the presiding officer could reduce this time period if fewer than 15 calendar days would provide all approved applicants sufficient preparation time.

It is important to note that in many instances approved applicants would have additional preparation time by virtue of the scheduling of written submissions in the proceedings funded by the proposal. For example, in a Part 12 proceeding, the applicant might not be required to submit its written direct testimony until one month after written direct testimony is submitted by another participant. This type of scheduling, which is not unusual, would allow an applicant a total of six weeks to prepare its written direct testimony. Thus, approved applicants should have sufficient time to prepare their presentations.

FDA recognizes that there may be situations in which the time frames proposed for processing applications do not fit precisely into the time frames provided under Parts 12, 13, 14, 15, and 16 or do not comply with an unusual or expedited procedure. The proposal makes provision for expedited submission and review of applications in those situations. The time constraints resulting from the submission of applications on an expedited basis may make it more difficult for applicants to complete and file their applications in a timely manner. These time constraints will, however, be necessary in some situations to foster early agency decisionmaking on reimbursement, thereby allowing applicants enough time to make decisions regarding the nature and scope of their participation and ensuring that agency proceedings are completed in a timely fashion. In some situations the effective participation of an applicant may be impossible because of the expedited scheduling of a particular proceeding. The Board would have the discretion to disapprove such applications.

The agency invites comments on whether the proposed regulation would provide applicants with adequate preparation time and on how the regulation might be improved to allow applicants additional preparation time without significantly delaying agency proceedings.

D. Standards for Reimbursement

The Board may approve an application if the Board makes positive findings on four criteria relating to the applicant's interest and economic need. The Board would be required to find that (1) representation of the applicant's interest contributes or can reasonably be expected to contribute substantially to a full and fair determination of the issues involved; (2) participation by the applicant is reasonably necessary to represent that interest adequately; (3) the applicant can competently represent the interest it espouses; and (4) the applicant does not have available sufficient resources to participate effectively without funding from FDA.

In the first and second criteria, the proposal intends to emphasize the qualtiy, significance, and unique nature of the contribution sought to be made. These criteria require that an applicant represent a significant interest that is not adequately represented by another participant. The term "interest" used in these criteria is not intended to be synonymous with the "public interest," nor does it mean an economic interest. Rather, it refers to a point of view, a perspective, a position on the issues in the proceeding. Although all participants and several applicants in a proceeding may claim to represent the public interest, each may have an entirely different point of view as to what constitutes the public interest; and each may present quite different testimony

and arguments in support of its respective position. It is representation of substantially the same position by an applicant and a participant that would result in an application being denied. If one of the agency's bureaus or another participant in a proceeding for which reimbursement is being sought adequately represents an interest sought to be represented by an applicant in the same proceeding, the Board is required to consider the bureau or the participant in question to be an adequate representative of that interest. This requirement is consistent with the House-Senate Conference Committee Report and the Comptroller General's rulings on this subject.

The fourth criterion, which concerns indigency, is not intended to restrict reimbursement only to insolvent organizations. This criterion is meant to encompass those organizations that have sufficient resources to pay the ordinary expenses of carrying on their ordinary activities, but not the exceptional costs of participating in a particular FDA proceeding. The Comptroller General held that it is appropriate to compensate those, in addition to the literally indigent, who are otherwise unable to afford participation (Decision B139703, December 3, 1976, p. 6). Such organizations might well include small businesses as well as public interest groups, but probably would not include trade associations whose member organizations jointly could afford participation.

In applying the fourth criterion, the Board would be required to take into account the ability of the applicant to bear some of the financial burden incurred in connection with a proceeding. FDA believes that applicants should bear a portion of the financial burden whenever possible. The agency also recognizes that some applicants may have sufficient resources to pay ordinary operating expenses and the cost of participation in some administrative proceedings and/or related litigation, but might be unable to afford participation in a particular proceeding because the participation would exhaust all the available funds or substantially limit the range of activities the applicant could undertake. FDA believes all of these factors should be considered in judging whether the applicant has sufficient resources.

Discussion of these and other problems in applying the fourth criterion may be found in CAB's advance notice of proposed rulemaking on reimbursement for public interest representation, published in the Federal Register of February 11, 1977 (42 FR 8663).

Consumers Union originally proposed an alternative to the "indigency" criterion. The proposed alternative would have permitted approval of an application where the applicant's economic interest in the outcome of the proceeding is small compared to the costs of effective participation. This criterion was not included in the proposal because, as discussed above, the Comptroller General rejected this alternative criterion on the ground that FDA may not extend financial assistance to a party that has the financial resources to participate, but that does not wish to use its resources for that purpose.

As discussed above, the House-Senate Conference Committee Report on FDA's 1979 appropriations bill provides that, except for expert witness applicants whose technical expertise is required, no applicant shall be eligible to receive reimbursement if he or she is not a resident of the locality to be affected by the outcome of the proceeding for which reimbursement is being sought. FDA considered making this requirement one of the eligibility criteria but concluded it was unnecessary because the requirement was not intended to apply to FDA, but rather to USDA, which is funded in the same appropriations bill.

USDA has jurisdiction over a number of proceedings that affect only specific localities. For example, USDA has jurisdiction over the Forest Service and the Soil Conservation Service. USDA proceedings relating to these services generally involve a specific area of land (e.g., a proceeding to determine the uses of a particular section of a National Forest). USDA also has jurisdiction over certain marketing orders that limit the amount and price of certain commodities sold in specific areas of the country. The "resident of the locality" requirement would therefore seem to apply to certain USDA proceedings.

FDA believes that the "resident of the locality" requirement does not apply to FDA because FDA proceedings always potentially have a nationwide impact. For example, the subject of an FDA proceeding may be the safety of a veterinary drug for food producing animals. The veterinary drug in question may be used only in areas of the country where livestock are raised, but the outcome of the proceeding would have a potential nationwide impact because meat produced from animals that received the drug in question could be marketed anywhere in the United States. The agency invites comments on whether there are FDA proceedings under this proposal to which the "resident of the locality" requirement would apply.

If more than one applicant representing the same or a similar interest satisfy the eligibility criteria, the Board may approve partial or complete funding of one or more applicants after comparing the interests that the applicants represent, their proposals, and their past performances in regulatory proceedings. The Board and the presiding officer would be authorized to encourage applicants representing the same or similar interests to submit combined applications. Such consolidations would enable more applicants to participate in proceedings funded by the proposal.

Resources for this program would be limited. Therefore, in any particular case, the Board may determine that in view of the public interest and the availability of funding for the demonstration program as a whole, no applications for reimbursement should be granted. If a final regulation establishing this program is promulgated, the agency would annually announce the total funding allocated to reimbursement for that year. The Board would also annually establish a presumptive limit on the total amount of money to be provided for reimbursement for any one proceeding funded by the proposal. The Board could, however, waive this limit in particular cases.

The agency invites comments on how the criteria for decisionmaking might be improved, including deletion, modification, or addition of criteria.

FDA invites comments on one other issue concerning applicant eligibility: Whether providing reimbursement to a small business or other applicant with a financial interest in the outcome of the proceeding would constitute a conflict of interest under 18 U.S.C. 208(a). That section prohibits a special government employee from participating in any government proceeding in which that employee has a financial interest. There is a provision (18 U.S.C. 208(b)) for waiver of this prohibition if the financial interest in question would not affect the integrity of the services the government may expect from that employee. The agency invites comments on whether a small business applying for reimbursement under the proposal would be prohibited from participating by 18 U.S.C. 208(a); and, if so, whether a waiver under 18 U.S.C. 208(b) would be permissible.

E. Reimbursement

Reimbursement would be limited to reasonable costs of participation in the

hearing, such as attorneys' fees, expert witness fees, and the expenses of clerical services, travel, and studies. Funds would be provided only for preparation for, and participation in, the hearing stage of the particular proceeding, including the filing of posthearing briefs and exceptions to the decision of the presiding officer. Reimbursement would also be provided (but only to approved applicants) in appropriate cases for certain work that is necessary for preparing the applicant's presentation at the hearing, but is begun before the approval of the application, such as consultation with an expert witness, or preparation of written direct testimony. Approved applicants would also receive reimbursement for travel costs incurred as a result of attendance at the prehearing conference in Part 12 proceedings.

Because the funding for the reimbursement program would be limited, reimbursement would not be provided for other earlier work, such as the submission of an application for reimbursement, or studies completed before the filing of an application. Moreover, reimbursement would not be provided for activities that are not directly related to an applicant's presentation in the proceeding for which reimbursement is being sought, such as fund raising activities to finance participation in the proceeding. Reimbursement would also not be provided for the hiring of outside personnel when staff personnel are available and qualified to do the work, nor would reimbursement be provided for indirect or overhead costs. Reimbursement would, however, be available in appropriate cases for time actually spent by staff members in preparing for, and participating in, a particular proceeding.

Approved applicants would be reimbursed only for reasonable services and costs of participation that have been authorized and reasonably incurred, up to a ceiling amount. An applicant's contractors may be paid at prevailing market rates. Reimbursement generally would not, however, exceed the rate of compensation paid by the agency to its own employees, expert witnesses, consultants, and other personnel possessing comparable experience and expertise. Reimbursement for staff services paid by participating groups and organizations would be limited to rates of reimbursement normally paid by the organization and, also, would not exceed rates paid to comparable FDA employees. Should a final regulation establishing a reimbursement program be published, the agency would also publish guidelines listing the maximum rates of reimbursement allowable for particular expenditures, e.g., payment of an expert witness. This practice is currently followed by FTC.

The ceiling on reimbursable costs is intended to encourage efficient use of government funds and thereby enable more parties to participate in the reimbursement program. FDA believes that this ceiling would not preclude effective participation in FDA proceedings under the reimbursement program. If, however, the Board found that an applicant's participation in a given proceeding would be exceptionally important and that the applicant otherwise met the criteria of proposed § 10.220(c)(3) but did not have available, and could not reasonably obtain in other ways, sufficient resources to participate effectively in the absence of compensation in excess of the cost ceiling, this requirement could be waived. Such waivers would be granted only in extremely rare cases.

Before each proceeding, the Board would inform each approved applicant of the maximum amount of compensation the applicant is authorized to spend. This notification would not specify precisely how the authorized funds should be spent. FDA believes that each applicant should be allowed some flexibility in allocating its funding to maximize the effectiveness of its participation. Expenditures would, however, be expected to follow approximately the itemization of anticipated expenses contained in the application for reimbursement; significant deviation would necessitate written justification by the applicant before final payment.

The final decision on the exact amount of reimbursement to be paid each applicant and payment of reimbursement funds, which will not exceed the maximum amount specified in the award document, would ordinarily take place after completion of the proceeding. At that time, the applicant would submit a claim with supporting documentation. Each applicant would be reimbursed for costs reasonably and necessarily incurred, up to the cost ceiling discussed above, within 30 calendar days from the filing of the claim.

FDA recognizes that the ability of some approved applicants to participate may be impaired by their failure to receive funds before the conclusion of the proceeding. FDA also recognizes that the Comptroller General considers impermissible the making of advance payments by the agency. Therefore, FDA has provided for applicants to submit, and the Board to grant, requests for periodic payment of expenses incurred before conclusion of the proceeding. This procedure has been approved by the Comptroller General.

Applicants would also be permitted to apply for supplementary reimbursement if the initial award is insufficient to permit the applicant to complete its proposal and if (1) the Board requested the applicant to perform additional work, or (2) the applicant demonstrates that it has been subject to an unforseeable and material change in its circumstances, or (3) the applicant or the Board substantially underestimated the probable cost of participation. Supplementary reimbursement would not be provided for work performed or costs incurred by an applicant or its contractors in advance of the Board's decision to provide supplementary reimbursement. The eligibility criteria for supplementary reimbursement would be the same as the criteria for the initial award (see Part VII. D. of this preamble, above).

The proposal would impose certain recordkeeping requirements upon applicants whose applications are approved. The records would be subject to audit; and, if the request for, or the receipt of, reimbursement award funds could not be reconciled with the expenditure of those funds, the Board could deny claims for payment or demand repayment of payments previously made. Claims could be denied or repayment demanded in situations in which the applicant clearly failed to provide adequate representation, or acted toward another participant or the presiding officer in a manner demonstrating bad faith, or in Part 12 proceedings in which the applicant's participation was stricken under § 12.45(g) from the proceeding for which reimbursement was being sought.

The agency invites comments on the adequacy of the rates of reimbursement proposed and how the procedures for providing reimbursement might be improved.

F. Conclusion

After consideration of all comments submitted on this notice of proposed rulemaking, the agency will decide whether to publish a final regulation in the **Federal Register** establishing a pilot reimbursement program.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 as amended

(42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b))), the Poultry Products Inspection Act (sec. 24(b) 82 Stat. 807 (21 U.S.C. 467f(b))), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (secs. 1 through 9, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149)), the Tea Importation Act (secs. 1 through 10, 29 Stat. 604–607 as amended (21 U.S.C. 41–50)), the Federal Caustic Poison Act (sec. 2 et seq., 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.)), the Fair Packaging and Labeling Act (sec. 1 et seq., 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.)), the Agriculture, Rural Development, and Related Agencies Bill (Pub. L. 95–448, 92 Stat. 1073, 1091), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 10 be amended by adding new Subpart C to read as follows:

Subpart C—Reimbursement for Participation in Administrative Proceedings

Sec.

10.200 General.
10.210 Application procedure.
10.215 Processing of applications by the presiding officer.
10.220 Processing of applications by the Evaluation Board.
10.250 Recoverable costs.
10.275 Supplementary reimbursement.
10.280 Payments.
10.290 Records.

Authority: Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 as amended (42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b))), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b))), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (secs. 1 through 9, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149)), the Tea Importation Act (secs. 1 through 10, 29 Stat. 604–607 as amended (21 U.S.C. 41–50)), the Federal Caustic Poison Act (sec. 2 et seq., 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.)), the Fair Packaging and Labeling Act (sec. 1 et seq., 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.)), the Agriculture, Rural Development, and Related Agencies Bill (Pub. L. 95–448, 92 Stat. 1073, 1091), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Subpart C—Reimbursement for Participation in Administrative Proceedings

§ 10.200 General.

This subpart establishes criteria and procedures for an Evaluation Board, as described in § 10.220(a), to make payment from agency funds of reimbursement for reasonable attorney's fees, expert witness fees, the expenses of clerical services, travel, studies, demonstrations, and other reasonable and necessary costs of participation incurred by a participant (whether or not a party) in an agency proceeding conducted under Part 12, 13, 14, 15, or 16 of this chapter that results in a hearing, if such participation satisfies the requirements of § 10.220(c)(3).

§ 10.210 Application procedure.

(a) An applicant shall apply for reimbursement within 25 calendar days after the date of publication in the **Federal Register** of the notice of hearing published under §§ 12.35, 13.5, 14.20, or § 15.20 of this chapter, or within 25 calendar days after the date on which the Food and Drug Administration sends the notice of opportunity for hearing issued under § 16.22 or § 16.24 of this chapter, except in extraordinary circumstances, e.g., when the hearing is being held by order of a court. In extraordinary circumstances, the Evaluation Board may establish an expedited procedure for submission and review of applications by notice published in the **Federal Register.** Although applications will be accepted after the periods specified in this section or established by the Evaluation Board, no assurance is given that they will be considered. An applicant shall submit four copies of the application to the Office of Consumer Affairs (HF–7), Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 15B–41, 5600 Fishers Lane, Rockville, MD 20857. All applications shall also be filed with the Hearing Clerk uder § 10.20. The outside envelope of each application shall include the statement "Application for Reimbursement" and the docket number of the proceeding in which the applicant desires to participate.

(b) Each application shall contain in the form of a sworn statement the following information, in the order specified:

(1) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of its governing body, and a description of the organization's general purposes, structure, and tax status.

(2) An identification of the proceeding for which the applicant desires funds in order to participate.

(3) A description of how the proceeding will affect the applicant economically, socially with respect to health and safety, or otherwise and an explanation of why the applicant would be an appropriate representative of other persons or groups similarly affected.

(4) A description of any contracting, consulting, or other income-producing relationship of the applicant with an organization having an economic interest in the outcome of the proceeding for which reimbursment is sought.

(5) A description and explanation of the position(s) the applicant proposes to present at the proceeding, including a description of the evidence, studies, viewpoints, methodologies, and information to be developed or used in supporting the applicant's position(s). The applicant should describe the issues it plans to address, and how the applicant plans to resolve these issues. This discussion should explain which ideas or viewpoints the applicant believes are novel or significant, and why the applicant believes that the presentation of these ideas and viewpoints would contribute to a full and fair determination of the issues involved in the proceeding.

(6) A discussion of the reasons why the applicant is an appropriate representative of the position(s) the applicant proposes to present in the proceeding, including the expertise and experience of the applicant, and any consultants it intends to employ, in the matters involved in the proceeding and evidence of the applicant's prior general performance.

(7) An explanation of how the applicant's participation would enhance the agency's decisionmaking process and serve that public interest by representing an interest that would not be adequately represented by another participant.

(8) An estimate of the total amount of funds needed.

(9) An itemized statement of the expenses to be covered by the total amount of funds requested and of the expenses to be covered by funds available to the applicant from other sources. For each task for which funds are requested, the statement shall clearly state the identity of the persons who will perform the task and their hourly rates of pay, the total cost of the task, the total hours required to perform the task, and a description of the evidence activities, studies, or other

submissions that will be generated by the task.

(10) An explanation of why the applicant would be prevented from participating effectively in the proceeding without the funding requested in the application.

(11) An explanation of why the applicant cannot use funds that it already possesses or expects to receive for the purpose for which funds are requested, including:

(i) A complete financial statement containing a listing of the applicant's anticipated income and expenditures, rounded to the nearest $100, for the then current fiscal year including, in the case of a group, association, partnership, or corporation, a list of the planned projects and the amounts to be expended on each.

(ii) A complete financial statement containing a listing of the applicant's income and expenditures, rounded to the nearest $100, for the prior fiscal year;

(iii) A listing of the total assets and liabilities of the applicant as of the date of application.

(iv) Where an applicant has previously submitted an application for financial assistance under this program during the preceding 6 months of the current fiscal year, the applicant need only inform the Board of any material changes in the financial data previously submitted.

(12) An explanation of why the applicant cannot in other ways obtain all or a portion of the funds that are requested, including a description of any other efforts by the applicant to obtain those funds in other ways and the feasibility of future attempts to raise funds in other ways.

(13) A list of all proceedings of the Federal government in which the applicant has participated during the past year, including the position represented and the contribution made by the applicant to the proceedings and any amount of financial assistance received from the Federal government in connection with those proceedings.

(c) Within the period specified in paragraph (a) of this section for the submission of applications to the Evaluation Board, or within such other time as the Evaluation Board prescribes, the applicant shall submit a copy of the application to the presiding officer in the proceeding for which reimbursement is being sought.

(d) Each applicant who seeks reimbursement for participation in a Part 12 proceeding shall attend the prehearing conference conducted under § 12.91 of this chapter. The presiding officer shall schedule the prehearing conference as soon as practicable after applications are due to be filed.

(e) The Hearing Clerk shall serve a copy of each application filed under paragraph (a) of this section on each existing participant in the proceeding for which reimbursement is being sought within five days of the filing of each application.

§ 10.215 Processing of applications by the presiding officer.

(a) Within 15 calendar days after receipt of an application under § 10.210(c) in Part 13, 14, 15, or 16 proceedings, or, within 7 calendar days after the first day of the prehearing conference conducted under § 12.91 of this chapter in Part 12 proceedings, or, if additional time is necessary to obtain information or documentation under paragraph (c) of this section, within the period the presiding officer prescribes, the presiding officer shall submit to the Evaluation Board a written recommendation and copies of all communications and documentation submitted under paragraph (c) of this section. The presiding officer's recommendation shall state whether the application meets the criteria set forth in § 10.220(c)(3) (i) through (iii). A copy of the presiding officer's recommendation shall be filed with the Hearing Clerk.

(b) In making a recommendation under paragraph (a) of this section, the presiding officer shall (1) consider all communications and documentation submitted under paragraph (c) of this section that relate to the criteria set forth in § 10.220(c)(3) (i) through (iii); (2) consider and discuss whether the application meets the criteria set forth in § 10.220(c)(3) (i) through (iii); (3) when two or more applicants who seek to represent the same or similar interests submit applications satisfying the criteria set forth in § 10.220(c)(3)(i) through (iii), consider and compare the skills and experience of the applicants and evaluate the contents of their proposals in light of the criteria set forth in § 10.220(f); and (4) if applicable, consider the criterion set forth in § 10.220(g)(1).

(c) In connection with the presiding officer's responsibility to make a recommendation, the presiding officer may communicate with the applicant or require the production of the documentation the presiding officer finds necessary. All of these communications shall be in writing or made a part of the official transcript of the proceeding for which reimbursement is being sought. All of these communications and documentation also shall be filed with the Hearing Clerk.

(d) Each participant may submit written comments on an application to the Evaluation Board within 15 calendar days after the application has been filed with the Hearing Clerk under § 10.210(a) in Part 13, 14, or 16 proceedings, or, in Part 12 proceedings, within 7 calendar days after the first day of the prehearing conference conducted under § 12.91 of this chapter, or within such other time as the presiding officer prescribes. All of these comments shall be filed with the Hearing Clerk under § 10.20.

(e) The presiding officer shall not begin a hearing in a Part 13, 14, 15, or 16 proceeding for which an application for reimbursement has been filed, nor may the presiding officer begin the taking of direct testimony under § 12.87 of this chapter, in a Part 12 proceeding for which an application for reimbursement has been filed, until 15 calendar days after all approved applicants have received a final decision from the Evaluation Board. This 15-calendar-day time period may be extended if the presiding officer on his or her own initiative or on motion of nay participant or applicant finds that an approved applicant needs additional time to prepare its presentation; the period may be reduced if the presiding officer on his or her own initiative or on motion of any participant or applicant finds that less than 15 calendar days would provide all approved applicants with adequate time to prepare their presentations.

§ 10.220 Processing of applications by the Evaluation Board.

(a) Applications shall be processed by an Evaluation Board composed of the Special Assistant for Consumer Affairs, or his or her representative, who will serve as chairman of the Evaluation Board, the Associate Commissioner for Management and Operations, or his or her representative, and a third person to be appointed by the Commissioner. Whenever a member of the Evaluation Board is participating in a Part 12, 13, 14, 15, or 16 proceeding, he or she shall not participate in the evaluation of applications for reimbursement filed for that proceeding.

(b) The Evaluation Board shall, in accordance with paragraph (c) of this section, review and rule upon every application submitted under § 10.210(a). In reviewing and ruling upon an application under this paragraph the Board shall (1) consider the criteria set forth in paragraph (c)(3) of this section; (2) if applicable, consider and compare the skills and experience of the applicant and the contents of the

applicant's proposal in light of the criteria set forth in paragraph (f) of this section; (3) if applicable, consider all applications that satisfy the criteria set forth in paragraph (c)(3) of this section in light of the criteria set forth in paragraph (g) of this section; and (4) consider the recommendation of the presiding officer, comments, and any other communications or documentation submitted under § 10.215(a) and (d).

(c) The Evaluation Board shall furnish a written response to each application submitted under § 10.210(a) within 15 calendar days after receipt of the presiding officer's recommendation submitted under § 10.215(a), or, in extraordinary circumstances, within the period the Board prescribes. The response shall be filed with the Hearing Clerk and shall:

(1) Provide a tentative response, indicating why the agency has been unable to reach a decision on the merits of the application, e.g., due to the existence of other agency priorities, a need for additional information, or other stated reason. The tentative response also may indicate the likely ultimate agency response and may specify when a final response will be furnished; or

(2) Deny the application and state the reasons in light of the criteria in paragraph (c)(3), (f), or (g) of this section. This response shall constitute final agency action; or

(3) Approve the application, in whole or in part, stating the reasons in light of the criteria in this paragraph. This response shall constitute final agency action. The award shall be processed by the appropriate office of the Associate Commissioner for Management and Operations. The Evaluation Board may approve an application, in whole or in part, only if it finds that:

(i) The applicant represents an interest the representation of which contributes or can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the number, complexity, and potential significance of the issues presented, the importance of public participation, the need for representation of a variety of interests, whether the applicant represents a significant interest that is not adequately represented by another participant, and the novelty, significance, and complexity of the positions advanced by the applicant.

(ii) Participation by the applicant is probably necessary to ensure adequate representation of that interest.

(iii) It is probable that the applicant can competently represent the interest it advocates.

(iv) The applicant does not have available, and cannot reasonably obtain in other ways, sufficient resources to participate effectively in the proceeding in the absence of the reimbursement sought. In determining whether an applicant would be able to participate effectively without reimbursement, the Evaluation Board shall examine the applicant's proposed expenditures for its representation in the proceeding, decide whether these projected expenditures are reasonable, and compare them to the applicant's income and expenditures, including anticipated future income and expenditures, for the then current fiscal year. The Evaluation Board shall also take into account the ability of an applicant to bear some of the financial burden incurred by such applicant in connection with the proceeding in question.

(4) If the Evaluation Board's final response to an applicant is not issued within 15 calendar days after receipt of the presiding officer's recommendation, the Evaluation Board shall promptly notify the presiding officer when a final response will be issued.

(d) The Evaluation Board may communicate with an applicant or the presiding officer. All of these communications shall be in writing, or, if oral, reduced to writing, and copies of the communications shall be filed with the Hearing Clerk.

(e) When two or more applicants who seek to represent the same or similar interests submit applications satisfying the criteria set forth in paragraph (c)(3) of this section, the Evaluation Board may approve, in whole or in part, one or more such applications.

(f) In selecting among any applicants specified in paragraph (e) of this section, the Evaluation Board shall consider and compare the skills and experience of the applicants and the contents of their applications. In particular, the Evaluation Board shall consider and compare:

(1) The applicant's experience and expertise in the matter that is the subject of the hearing;

(2) The applicants' prior general performance and competence;

(3) Evidence of the applicants' relations to any particular groups whose views they seek to represent; and

(4) The specificity, novelty, relevance, and significance of the ideas the applicants propose to develop and present.

(g) The Evaluation Board may, but is not required to, select any of the applicants that satisfy the criteria of paragraph (c)(3) of this section. In making this decision, the Evaluation Board shall consider:

(1) Whether an applicant's position can be reasonably developed and presented within the time allotted;

(2) The current availability of funding for assistance under this section;

(3) Applications for reimbursement submitted in other agency proceedings; and

(4) Any other relevant information.

(h) The Hearing Clerk shall maintain a chronological file of all applications for reimbursement filed under this subpart, which shall include:

(1) A copy of each application;

(2) Copies of all material filed under § 10.215(a) and (d);

(3) Copies of all responses filed under paragraph (c) of this section;

(4) Copies of all communications filed under paragraph (d) of this section.

§ 10.250 Recoverable costs.

(a) The following costs and services are reimbursable under this subpart:

(1) Salaries or other remuneration for services performed by participants or their employees:

(2) Fees for consultants, expert witnesses, contractual services, and attorneys;

(3) Transportation costs, including costs of transportation to and from the prehearing conference conducted under § 12.91 of this chapter in Part 12 proceedings;

(4) Travel-related costs such as lodging, meals, and telephone calls, including travel costs related to attendance at the prehearing conference conducted under § 12.91 of this chapter in Part 12 proceedings;

(5) Costs of studies or demonstrations;

(6) All other necessary costs reasonably incurred.

(b)(1) Reimbursement is limited to necessary services and costs of participation that have been authorized and reasonably incurred. Reimbursement for the services of the staff of any participating group or organization is limited to the rate of reimbursement normally paid by the applicant for staff services.

(2) Reimbursement shall not, however, exceed the rate of compensation, including fringe benefits and overhead, routinely paid to Food and Drug Administration attorneys, expert witnesses, consultants, or other personnel possessing comparable experience and expertise who are employed or retained by the Food and Drug Administration.

(c) The Evaluation Board may waive the reimbursement limitation set forth in paragraph (b)(2) of this section if it finds that the applicant's participation in the proceeding would be exceptionally important and the applicant otherwise meets the criteria of § 10.220(c)(3) but does not have available, and cannot reasonably obtain in other ways, sufficient resources to participate effectively in the proceeding in the absence of reimbursement in excess of the limitation set forth in paragraph (b)(2) of this section. Such waivers will be granted only in extremely rare cases.

§ 10.275 Supplementary reimbursement.

(a) Applicants may apply to the Evaluation Board for supplementary reimbursement if the initial award is insufficient to permit the applicant to complete its proposal and if:

(1) The Board requested the applicant to perform work in addition to that contained in the approved proposals; or

(2) The applicant demonstrates it has been subject to an unforeseeable and material change in its circumstances; or

(3) The applicant or the Board substantially underestimated the probable cost of participation.

(b) Supplementary reimbursement shall not be provided for work performed or costs incurred by an applicant or its contractors in advance of the Board's decision to provide supplementary reimbursement.

(c) The Board shall provide supplementary reimbursement under the criteria of § 10.220(c)(3) and paragraphs (a) and (b) of this section.

§ 10.280 Payments

(a) Any payments authorized under this subpart shall be made by the Office of Management and Operations within 30 calendar days after the date on which the applicant submits a completed claim for reimbursement, including bills, receipts, or other proof of costs incurred.

(b) If an applicant whose applicaton has been approved in whole or in part under § 10.220(c)(3) establishes in writing that its ability to participate in the proceeding will be impaired by the failure to receive funds before the conclusion of such proceeding, the Evaluation Board may authorize payments on a periodic basis during the proceeding to enable the applicant to participate in the proceeding. These payments would be for expenses already incurred in connection with contributions already made to the agency proceeding.

(c) Claims for payment under this subpart shall be denied, and applicants receiving payments under paragraph (a) of this section or periodic payments under paragraph (b) of this section shall be liable for repayment of part or all of the payments or periodic payments received, if the Evaluation Board determines that:

(1) The applicant clearly has not provided the representation for which these payments or periodic payments were claimed or made; or

(2) The applicant has failed to maintain the records required by § 10.290 (a) or (b) or has failed to permit the audit provided for in § 10.290(c); or

(3) The applicant has failed to justify adequately the lack of reconciliation between the receipt of or request for reimbursement award funds and their expenditure as disclosed by an audit under § 10.290; or

(4) The applicant has acted in a manner demonstrating bad faith toward any other participant or toward the presiding officer, or the applicant has had its participation stricken under § 12.45(g) of this chapter.

§ 10.290 Records.

(a) Applicants awarded reimbursement shall maintain complete and accurate records relating to the expenditure of funds for which reimbursement was awarded, the receipt and disposition of reimbursement funds, and the expenditure of the applicant's contributed share of the cost of participation, if any.

(b) These records shall include all accounting records and related original and reporting documents that substantiate costs incurred in participation, and shall be retained for 3 years after the date on which payment by the agency is made.

(c) These records are subject to audit by the Office of Management and Operations, the General Accounting Office, and the Office of Inspector General, Department of Health, Education, and Welfare. If an audit discloses that the request for or receipt of reimbursement award funds cannot be reconciled with their expenditure, the Evaluation Board may prepare a proposal for repayment of payments made or for denial of payments claimed, in whole or in part, and shall send a copy of the audit findings and the proposal for repayment or denial of payments claimed, if any, to the applicant. If the applicant disagrees with the result of the reconciliation or the proposal for repayment or denial of payments claimed, if any, it shall file with the Evaluation Board a written response that addresses each issue raised by the audit findings within 30 calendar days after receipt of the audit findings and the proposal for repayment or denial of payments claimed, if any. Thereafter, the Evaluation Board shall issue a final order that requires or does not require repayment, in whole or in part, of payments made, or does or does not deny payments claimed.

Interested persons may, on or before June 18, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockvile, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4. p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: April 10, 1979.

Sherwin Gardner,
Acting Commissioner of Food and Drugs.

[Docket No. 76P–0126]
[FR Doc. 79–11855 Filed 4–16–79; 8:45 am]
BILLING CODE 4110–03–M

Federal Register

Tuesday
April 17, 1979

Part VI

Federal Home Loan Bank Board

Federal Savings and Loan Insurance Corporation; Conversion From Mutual to Stock Form

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

Federal Savings and Loan Insurance Corp.; Conversion From Mutual to Stock Form; Correction

Dated: March 21, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Correction of final rule.

SUMMARY: The Federal Home Loan Bank Board by Board Resolution No. 79-200, dated March 21, 1979, adopted certain proposed amendments to the regulations and related forms of Part 563b of the Regulations for Insuranace of Accounts. When this resolution was published in the **Federal Register** as Document No. 79-9579 (44 FR 18880, March 29, 1979), item 6(a)(1)(iii) of Form PS and the instructions thereunder were inadvertently deleted. This item and related instructions are printed below:

FOR FURTHER INFORMATION CONTACT: Douglas P. Faucette, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. Telephone number (202) 377-6410.

Part 563b is corrected on page 18898, in the middle column by adding the following information just before the beginning of "Item 7. *Business of the applicant.*

(iii) Specified Tabular Format:

Remuneration Table

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash-equivalent forms of remuneration		(D) Aggregate of contingent forms of remuneration
		(C1) Salaries, fees, directors' fees, and bonuses	(C2) Securities or property insurance benefits or reimbursement, personal benefits	

Instructions. (1) Column C shall include remuneration for services rendered during the fiscal year distributed to or for the account of the specified person or group, or which is accrued and with reasonable certainty will be distributed or unconditionally vested in the future. Column C should be segregated into two subcolumns; the first, C1, should include the forms of remuneration described in Instruction 1(a), below; the second, C2, should include the forms of remuneration described in Instruction 1(b), (c) and (d), below. Column C shall include cash or cash-equivalent amounts distributed or accrued, including but not limited to the following:

(a) *Salaries.* All cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) *Securities or property.* The spread between the acquisition price, if any, and the fair market price of all securities or property acquired under any contract, agreement, plan or arrangement, for the benefit of any of the specified persons or groups. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the following events occurs: or if the the plan or arrangement contemplates that both such events may occur, the fair market price shall be determined as of the date during the fiscal year that the later event occurs; (1) The recipient exercises any option, right or similar election in connection with the contract, agreement, plan or arrangement; or (2) The recipient becomes entitled without further contingencies to retain the securities or property.

(c) *Life or health insurance; medical reimbursement plans.* The cost of premiums paid by the applicant or any of its subsidiaries on life insurance policies insuring any such person or group, unless the sole beneficiary under the policy is the applicant or its subsidiaries. Also, the cost of any premium for health insurance and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified persons and groups shall be allocated to such persons and groups and reflected in Column C. Information need not be furnished pursuant to this Instruction (1)(c) for any costs under group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the applicant and which are available generally to all salaried employees.

(d) *Personal benefits.* 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 applicant or its subsidiaries directly or through third parties to each of the specified persons and groups, or benefits furnished by the applicant or its subsidiaries or other persons which indirectly benefit the specified persons.

(i) *Valuation.* Such benefits shall be valued on the basis of the applicant'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.

(ii) *Conditional exclusion of personal benefits.* If the applicant cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits may be omitted from the table provided the following condition is met: *Inquiry.* After reasonable inquiry, the applicant 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.

(iii) *Footnote disclosure.* If as to a person named in the table an amount representing personal benefits included in Column C2 exceeds 10 percent of the aggregate amount disclosed in Columns C1 and C2 or $25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of Column C2 represented by such personal benefits and briefly describing the kinds of such benefits.

(2) Column D shall include remuneration of the specified persons and groups in whole or in part for services rendered during the fiscal year, including but not limited to the forms of remuneration described below, if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

Note.—Applicants need only report remuneration in accordance with Column D as it relates to the latest fiscal year. They need not, for example, report amounts accrued in previous periods.

(a) Pension or retirement plans; annuities; employment contracts; deferred compensation plans.

(i) As to each of the specified persons and groups, the amount expensed for financial reporting purposes by the applicant and its subsidiaries for the year which represents the contribution, payment, or accrual for the account of any such person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans, or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless, in the case of a defined benefit or actuarial plan, the amount of the contribution, payment, or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table: (A) Stating such fact; (B) disclosing the percentage which the aggregate contributions to the plan bears to the total remuneration of plan participants covered by such plan; and (C) briefly describing the remuneration covered by the plan.

(3) *Transactions with third parties.* Item 6(a), among other things, includes transactions between the applicant and a third party when the primary purpose of the transaction is to furnish remuneration to the persons specified in Item 6(a). Other transactions between the applicant and third parties in which persons specified in Item 6(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 6(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 6(a).

(4) *Other permitted disclosure.* The applicant may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

(5) *Definition of "plan".* The term "plan" as used in this item includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

(2) *Proposed Remuneration.* Briefly describe all remuneration payments proposed to be made in the future, pursuant to any existing plan or arrangement to the person and groups specified in Item 6(a)(1). As to defined benefit or actuarial plans with respect to which amounts are not included in the table pursuant to Instruction 2(a) to Item 6(a), include a separate table showing estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the applicant and which are available generally to all salaried employees.

(3) *Remuneration of Directors.* (i) *Standard arrangements.* Describe any standard arrangement, stating amounts, by which directors of the applicant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(ii) *Other arrangements.* If a director of the applicant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state the name of each such director and the amount of such remuneration earned by each; if this information is given as to a person named in the table required by Item 6(a), a cross-reference may be used.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[No. 79-200]

[FR Doc. 79-11906 Filed 4-16-79; 8:45 am]

BILLING CODE 6720-01-M

federal register

Tuesday
April 17, 1979

Part VII

Department of the Interior

Fish and Wildlife Service

Listing of the Bolson Tortoise as an Endangered Species

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Listing of the Bolson Tortoise as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service hereby determines the Bolson tortoise (*Gopherus flavomarginatus*) to be an Endangered species. This action is being taken because the tortoise is under heavy pressure from human predation, habitat modification, competition from grazing stock, and collection of individuals. This action will provide additional protection to this species, listed now on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Bolson tortoise is known from the states of Chihuahua, Coahuila, and Durango in Mexico.

DATES: This rule becomes effective on May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. O'Connor, Acting Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343–4646).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1978, the Fish and Wildlife Service was petitioned by Dr. David Morafka of California State University—Dominguez Hills to list the Bolson tortoise, *Gopherus flavomarginatus*, as an Endangered species under provisions of the Endangered Species Act of 1973. Included with the petition was a report entitled "The Ecology and Conservation of the Bolson Tortoise, *Gopherus flavomarginatus*" in which Dr. Morafka reviewed the biology and status of the species throughout its range. On June 29, 1978, the Director of the Service notified Dr. Morafka that he had supplied sufficient information to warrant serious consideration for listing under provisions of the Act.

On September 26, 1978, the Service published a proposed rulemaking in the **Federal Register** (43 FR 43692–43693) advising that sufficient evidence was on file to support a determination that the Bolson tortoise was an Endangered species pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* That proposal summarized the factors thought to be contributing to the likelihood that this tortoise could become extinct within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections and factual information from any interested person.

Those factors affecting the status of this species were published in the proposal to list the Bolson tortoise and are reprinted below:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—Habitat destruction is accelerating throughout the range of the Bolson tortoise. Plowing and irrigation of fields for cotton, beans, corn, and melons has apparently contributed to the extirpation of the species in certain areas, such as the region west of Mexican Highway 49 and around Tlahualilo in Durango. As Mexico's resettlement program continues, more and more of the tortoise's habitat will likely be converted to agricultural and grazing uses. The continued existence of the tortoise in the vicinity of such practices is highly unlikely.

Habitat destruction also occurs through overgrazing by cattle and goats. Goat herds have long moved across the foothills of the tortoise country. Water supplies have been increased by underground drilling and as a result cattle are rapidly increasing in density in these arid grasslands. Some areas are now beginning to show the marked effects of overgrazing, usually indicated in this type of habitat by the erosion of topsoil and invasion of mesquite and creosote shrub. Cattle and goats destroy browse needed by the tortoises as well as burrows and cover sites.

2. *Overutilization for commercial, sporting or educational purposes.*—In the past, Bolson tortoises have been in demand for private collections, zoos, and museums in the United States and elsewhere; occasional shipments have reached dealers in El Paso. The extent of this collection is presently unknown in light of the tortoise's status as an Appendix II species on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, Mexico is not a party to the Convention and it is likely that some trade is continuing. As recently as January, 1978, Americans have been reported in Ceballos, Durango buying specimens.

3. *Disease or predation.*—Natural predation is probably only a minor factor contributing to the status of the Bolson tortoise. However, human predation may be the main cause for the extirpation or reduction in numbers of this tortoise over large areas of its range. This species is used extensively for food by the local population and although much of the area inhabited by tortoises is only sparsely settled, the tortoise populations are often eliminated as far away as 10 kilometers from the nearest habitation. As settlement increases, continued predation on the tortoises will accelerate.

4. *The inadequacy of existing regulatory mechanisms.*—Although permits are required by Mexico for the scientific collection of this species, no active resident personnel are present to enforce whatever legal protection may exist. There is no legal protection for the tortoise from local consumption. According to Dr. Morafka's report, the enforcement of existing trade restrictions is also lacking.

5. *Other natural or man-made factors affecting its continued existence.*—Not applicable.

The government of Mexico was notified of this proposal and asked to submit any comments, reports, published material, or other information pertinent to the proposal. No official comments were received from any Mexican officials or government agencies.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife and Plants.

In the September 26, 1978, **Federal Register** proposed rulemaking (43 FR 43692–43693) and associated September 27, 1978, Press Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period September 26, 1978, to January 3, 1979, were considered.

A total of 17 comments were received. Ten of these represented private individuals or scientists while the remainder represented organizations. The organizations submitting comments were: Desert Tortoise Council (Dr. Glenn R. Stewart), Defenders of Wildlife (Laura Tangley), Environmental Defense Fund (Sherrard Coleman), Animal Protection Institute (Jane Risk), Sierra Club (Barbara Munves), San Diego Turtle and Tortoise Society (Vern Kirchman) and Instituto de Ecologia of Sede Museo de Historia Natural de la

Ciudad de Mexico (Biol. Gustavo Aguirre L.). All those who responded to the proposal endorsed federal protection and Endangered status. No new information was added to that contained in the proposal although several individuals made reference to Dr. David Morafka's report on this species.

After a thorough review and consideration of all the information available, the Director has determined that (1) the Bolson tortoise is threatened with becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act, as specified in the proposal of September 26, 1978 (43 FR 43692–43693) and discussed above, and (2) listing the species as Endangered will provide it with necessary protections to ensure its survival.

Effect of the Rulemaking

The effects of this rulemaking and this determination include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered and Threatened species. The regulations referred to above, which pertain to Endangered species, are found at § 17.21 of Title 50 and are summarized below.

With respect to the Bolson tortoise, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, will now apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the **Federal Register** of September 26, 1975 (40 FR 44412) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service has reviewed the status of the Bolson tortoise to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon Appendix I of the Convention. The Service believes that such a change is warranted and proposed such in the **Federal Register** of November 27, 1978 (42 FR 55314–55319).

Endangered Species Act Amendments of 1978

The Endangered Species Act Amendments of 1978 specify that the following be added at the end of subsection 4(a)(1) of the Endangered Species Act of 1978:

> At the time any such regulation (any proposal to determine a species to be an Endangered or Threatened species) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Since the species under consideration in this rulemaking is foreign, this amendment does not apply.

The Endangered Species Act Amendments of 1978 further state the following:

> (B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—
>
> (i) Shall publish general notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation
>
> (I) In the **Federal Register**, and
>
> (II) If the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat;
>
> (ii) Shall offer for publication in appropriate scientific journals the substance of the **Federal Register** notice referred to in clause (i)(I);
>
> (iii) Shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and
>
> (iv) Shall—
>
> (I) If the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefore is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and
>
> (II) If the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

In the case of the Bolson tortoise herein considered, Section 4(B)(i)(I) above has been complied with. In addition, the following scientific journals were notified of the proposal and offered a copy of the **Federal Register** document for either publication or distribution to scientists: Copeia, Herpetologica, Herpetological Review, and the Journal of Herpetology. Since this species is foreign and no critical habitat has been proposed, none of the other amended subsections of this Section are applicable. Therefore, the proposal as published on September 26, 1978, does not need to be supplemented to comply with the Endangered Species Act Amendments of 1978. Accordingly, the Service is proceeding at this time with a final rulemaking to determine this species as Endangered pursuant to the Endangered Species Act of 1973.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia. It addresses this action as it involves the Bolson tortoise. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (703/235–1975).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the Bolson tortoise to the list, alphabetically, under "Reptiles" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species							
Common Name	Scientific Name	Historic Range	Population Where Endangered or Threatened	Status	When Listed	Critical Habitat	Special Rules
REPTILES							
Tortoise, Bolson	*Gopherus flavomarginatus*	Mexico	Entire	E		N/A	N/A

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

Dated: April 9, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-11953 Filed 4-16-79; 8:45 am]

BILLING CODE 4310-55-M

Reader Aids

Federal Register

Vol. 44, No. 75

Tuesday, April 17, 1979

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders (GPO)
202-275-3054	Subscription problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
523-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects

FEDERAL REGISTER PAGES AND DATES, APRIL

19181-19364.....2
19365-20053.....3
20055-20393.....4
20395-20624.....5
20625-20998.....6
20999-21240.....9
21241-21606.....10
21607-21756.....11
21757-22024.....12
22025-22432.....13
22433-22696.....16
22697-23064.....17

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Ch. I.....19181
51.....19182

3 CFR

Administrative Orders
Presidential Determinations:
No. 79-7 of March 20, 1979.....22697
No. 79-8 of March 27, 1979.....22699
April 6, 1979.....21245
Proclamations:
3279 (Amended by Proc. 4655).....21243
4652.....19369
4653.....20999
4654.....21241
4655.....21243
4656.....21757
4657.....22025
Executive Orders:
11636 (Amended by EO 12128).....20625
12107 (Amended by EO 12128).....20625
12127.....19367
12128.....20625
12129.....21001
12130.....22027

4 CFR

101.....22701
102.....22701
104.....22701
416.....20443

5 CFR

213.....20701, 21247-21251, 22702, 22703
230.....20701
250.....20701
300.....20701
302.....20701
315.....20701
316.....20701
340.....20698
351.....20701
410.....20701
531.....20701
591.....20701
720.....22029
737.....19974
890.....20698

7 CFR

1.....21251
6.....22037
15a.....21607
226.....21252
227.....20627
905.....21759
907.....20395, 21619, 21760
908.....20395, 21760
910.....20628, 21761, 22037
911.....20629
915.....20629
928.....22433
979.....22038
1002.....21003
1004.....21620
1421.....19182, 19371
1472.....21621
1701.....20629
1822.....20396, 20629, 21761
1980.....22433
Proposed Rules:
Ch. IX.....20164
271.....21504, 21541, 22746
272.....21541, 22746
275.....21504, 22746
800.....20164
802.....20164
803.....20164
918.....20444
1421.....19411
1423.....19413
1424.....19413
1427.....19416
1434.....19413
1446.....22081
1491.....20164, 22746
1701.....20709, 22746
1822.....19419
1823.....21801
1942.....21801
1933.....19419
1944.....21994

8 CFR

108.....21253
236.....21253
274.....22704
Proposed Rules:
231.....21809

9 CFR

78.....22045
82.....19371, 19372, 21259, 22046, 22709, 22710
92.....19373
381.....22047, 22049
Proposed Rules:
92.....19423

10 CFR

140.....20632
205.....22711
212.....22010
420.....20055
430.....22410

450.....19338, 21005
455.....19338, 21005, 22940
508.....21230
595.....20398

Proposed Rules:
Ch. I.....21810
Ch. II.....21810
9.....22746
35.....21023
140.....20709
210.....19423
211.....19423, 20444
212.....19423, 21651
420.....22608
436.....19326
440.....22608
456.....21654
463.....22974
500.....19427
501.....19427
502.....19427
503.....19427
504.....19427
505.....19427
506.....19427
507.....19427
600.....20594

11 CFR
Ch. IX.....20336, 22407

12 CFR
4.....20063
5.....20064
7.....22388, 22712
8.....20065
12.....19374
24.....19374
207.....20066
220.....20066
221.....20066
307.....20633
327.....20633
563b.....23058
701.....21762

Proposed Rules:
27.....22396
204.....20716
217.....20716, 21023
329.....21290
526.....21027, 22469
701.....20447, 21029

13 CFR
113.....20067
120.....21622
311.....20634

Proposed Rules:
107.....21292
121.....21654
131.....21654
302.....19427

14 CFR
39.....19184, 20402, 21763, 22439, 22440
71.....19185, 20402, 21763–21766, 22471
73.....21766, 22442
97.....20403
205.....20635
323.....20635
296.....21767
375.....21767
385.....20645, 22715

Proposed Rules:
Ch. V.....19206
23.....22656
25.....22656
39.....19205, 21811
71.....19205, 20448, 21812–21815, 22471
135.....22656
323.....20717
399.....21816

15 CFR
90.....20646
275.....19383
372.....20073
375.....19383

Proposed Rules:
934.....22081

16 CFR
1.....21005, 21624
13.....19384, 20074, 20405
901.....21005
456.....22442
1700.....21625

Proposed Rules:
13.....21033, 21035, 21820, 22488, 22491, 22494
450.....22497
1307.....22497

17 CFR
170.....20649
200.....19186, 21562, 22715
202.....21562
210.....19386
211.....20075
230.....21562
231.....21007, 21562, 21626
239.....21562
240.....21213
249.....21562
249a.....21213
240.....19386
270.....19387
271.....21007, 21626
275.....19386
279.....21008
300.....21211
301.....21211

Proposed Rules:
Ch. II.....20354
32.....22089
140.....21295
230.....21656
240.....20614
249.....20614

18 CFR
3.....20077
35.....20077
154.....19387
157.....19387
274.....21008
284.....20078
287.....20078

Proposed Rules:
Ch. I.....22090
Ch. II.....19206
1a.....21586
1b.....21586
2.....22751
4.....22109
16.....22109
32.....21683
35.....21686, 22110
131.....22109
141.....21596
154.....22110
157.....21682
273.....22110
308.....20175

19 CFR
101.....19389
153.....22051
159.....21009, 21260, 21768, 22052

20 CFR
404.....20652, 22444
416.....22444
422.....20078
675.....19990
676.....19990
677.....19990
678.....19990
679.....19990

Proposed Rules:
401.....21496
404.....20179
416.....20179

21 CFR
10.....22318
12.....22318
13.....22318
14.....22318
15.....22318
16.....22318
80.....22053
175.....20653
176.....20653
182.....20655, 20656
184.....19389, 20655, 20656
193.....19186
201.....20657
369.....22053
430.....20663
431.....20663
436.....20659, 20663, 22057
440.....22058
442.....20663
446.....20667, 22057
448.....22059
449.....20659
460.....20663, 20668
505.....22053
510.....20670
520.....21260
522.....20671
536.....22053
539.....22053
540.....20672
548.....22053
558.....20673, 20676
561.....19186
610.....20673
680.....20673
801.....20676

Proposed Rules:
10.....23044
70.....20718
182.....19430
184.....19430
186.....19430
193.....22752
207.....22110
310.....19434, 22752
314.....19434
320.....22111
413.....19434
500.....20718
510.....19438
514.....20718
571.....20718
808.....19438, 19443, 22118, 22119
884.....19894–19970
1000.....22755
1090.....22121

22 CFR
11.....19391
15a.....21011
51.....19393

Proposed Rules:
142.....21661

24 CFR
200.....19394, 22444
280.....20679
510.....21750
570.....20994, 22453, 22648
600.....21227
841.....20090, 22678
882.....21629
888.....21768
1710.....21442, 22059
1715.....21442, 22059
1914.....19397, 20093, 21769
1915.....19399, 19400, 21630
1917.....19400, 20155–20163, 20405–20415, 21631–21643, 21770–21784,
3280.....20679, 21014

Proposed Rules:
39.....21660
279.....22652
570.....22682
600.....21738, 22666
865.....22472
870.....22472
882.....21556
1917.....20206–20219, 20449–20460, 21038–21042, 21297–21301, 21669–21680, 22121
2205.....21216

25 CFR
41.....19187
43.....19187

26 CFR
1.....20078, 20416
5.....19190
53.....21643

Proposed Rules:
Ch. I.....19284
31.....21824

27 CFR

Proposed Rules:
231.....22473
240.....22473

28 CFR
0.....21261
60.....21785

29 CFR

575 22059
1910 ..... 20680, 20940
1926 20940
2520 19400
2610 22453

Proposed Rules:

402 21302
403 ..... 21301, 21302
1601 22122
2520 21302
2530 21302

30 CFR

Proposed Rules:

55 22123
56 22123
57 22123

31 CFR

8 21302
51 19191
203 20433
226 19406

32 CFR

197 21786
706 22455
718 22455
825a 20681

Proposed Rules:

294 21304

32A CFR

134 19207

33 CFR

80 22456
82 22457
95 22456
110 21792
117 19192
127 20424
165 20425

Proposed Rules:

Ch. I 19207
117 19208
153 22476
161 ..... 21974, 22476
164 22686
343 20350

36 CFR

921 22061
9 20426

Proposed Rules:

51 22123
216 22759

37 CFR

Proposed Rules:

2 22478
302 20220

38 CFR

1 22067
3 22716
36 22722

39 CFR

111 21015

Proposed Rules:

3001 22479

40 CFR

52 ..... 19192, 20079, 20372, 21019, 21644
65 ..... 20080–20082, 22458, 22460, 22461
81 21261
86 20084
180 ..... 21645, 22068
407 22463
434 19193
435 22069

Proposed Rules:

52 ..... 20221, 20372, 21307–21313, 21828, 22126
56 20718
65 ..... 19208–19211, 20222, 20223, 20225–20227, 20719, 21042, 21315, 21680, 22129–22131, 22480, 22481
66 22761
67 22761
81 ..... 19212, 19213, 21043
86 22131
201 22960
405 19214
406 19214
407 19214
408 ..... 19214, 20461
409 19214
411 19214
412 19214
418 19214
422 19214
424 19214
427 19214
432 19214

41 CFR

Ch. 1 ..... 21792, 22725
Ch. 4 ..... 20427, 20428
1–16 20688
1–18 20688
3–2 21264
3–6 821266
101–20 22465
20 19194
50–201 22078
101–47 19406
114–51 21267

Proposed Rules:

60–1 22761
60–2 22761
60–30 22761
101–20 19443

42 CFR

2a 20382
122 19304
123 19304
447 20695

Proposed Rules:

36 22132
51 22132
51b 22133
51c 22133
51g 22133
56 22133
71 21044
110 22133
433 20722
460 20724

43 CFR

17 22372
3250 20390
3830 20428

Proposed Rules:

3400 20464
4700 20724

Public Land Orders:

5660 19406

45 CFR

20 22727
205 20430
220 20430
222 20430
228 ..... 20088, 20430
280 22727
415 22728
602 19406
1068 21020
1100 22728
1151 22730
1160 21681
1495 22660

Proposed Rules:

Ch. XIII 19214
130 22482
206 21044
1068 21829
1071 21829
1624 22482

46 CFR

12 21020
401 19360
537 21646

Proposed Rules:

Ch. IV 22487
401 ..... 19362, 21044
402 ..... 19362, 21044

47 CFR

0 ..... 21267, 21793, 22078
2 ..... 21021, 21793
15 21021
73 ..... 20432, 21021, 22078, 22738, 22740–22743
83 21022
90 22079
97 22466

Proposed Rules:

73 ..... 20465, 21044–21048, 21050, 22133, 22762, 22763
81 21831
95 20465
97 20465

48 CFR

Proposed Rules:

15 19214
17 19214
24 19214
32 21051
42 21051
44 19214

49 CFR

172 ..... 21793, 22466
173 ..... 20433, 21793
178 21793
179 20433
256 21646
573 20434
1033 ..... 19202, 19203, 20437–20439, 21647, 21797, 21798, 22744
1300 21647
1303 21647
1306 21647
1307 21647
1308 21647
1309 21647
1310 21647

Proposed Rules:

525 21051
1100 22765
1605 22110
1710 20461
1720 20461
1730 20461
1740 20461
1760 20461
1770 20461
1780 20461
1790 20461

50 CFR

17 ..... 21288, 23062
26 22467
32 ..... 20440, 21799
33 ..... 19407, 19408, 20089, 21800
216 ..... 20440, 21800
222 21288
230 19408
602 20441
611 21022
651 22744
652 20441
653 20442
671 20698

Proposed Rules:

Ch. VI 21681
12 20228
258 21832
651 21682
652 20467
654 19444

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

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

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing Apr. 12, 1979

Announcement

The Office of the Federal Register is planning to publish periodically a list of libraries in the United States where the *Federal Register* and *Code of Federal Regulations* can be examined by the public free of charge.

The purpose of publishing this list is to spotlight the availability to the public of these publications. Any library that maintains these publications and makes them available to the public and wishes to be included in this list should write to the Director of the Federal Register, National Archives and Records Service, GSA, Washington, D.C. 20408, or phone 202-523-5240, giving name and address of the library.

The first such list will be published on July 2, 1979—will be updated in the issue for September 4, and will be published annually thereafter unless public interest requires more frequent publication.