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Federal Register

Monday
June 4, 1979

Highlights

32074 **Hospital Review** HEW/HCFA establishes procedures for the Professional Standards Review Organization; effective 7–5–79 (Part II of this issue)

32006 **Clean Water** EPA proposes rule for judicial review to provide greater fairness in future "races to the courthouse", comments by 8–3–79

31940 **Farm Credit System** FCA amends rules dealing with personnel administration of member institutions; effective 4–4–79

32094 **Environmental Assessment of Federal Programs** DOT/FAA publishes draft entitled "Policies and Procedures for Considering Environmental Impacts"; comments by 7–5–79 (Part III of this issue)

31950 **Customs and Navigation Law Violations** Treasury/Customs changes laws relating to fines, penalties, and forfeitures; effective 7–5–79

31984 **Securities Exchange Act** Treasury/Comptroller amends Disclosure Rules, comments by 8–3–79

32011 **Tariffs for Railroads** ICC considers applicability of predominant article theory and other matters, comments by 7–16–79

31962 **Recordkeeping and Reporting** Treasury/Customs amends regulations; effective 7–5–79

CONTINUED INSIDE

Highlights

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32062 **Pig Iron From Brazil** Treasury/Customs notifies public of a countervailing duty investigation; effective 6–4–79

32049 **Sugar From Canada** ITC determines indication of injury by importation

32063 **Condenser Paper From Finland** Treasury/Customs announces an antidumping investigation to determine sales at less than fair value; effective 6–4–79

32063 **Condenser Paper From France** Treasury/Customs announces an antidumping investigation to determine sales at less than fair value; effective 6–4–79

32068 **Sunshine Act Meetings**

Separate Parts of This Issue

32074 **Part II, HEW/HCFA**
32094 **Part III, DOT/FAA**
32187 **Part IV, DOT/FAA**
32190 **Part V, Interior/BIA**

Contents

Federal Register
Vol. 44, No. 108
Monday, June 4, 1979

Agricultural Marketing Service
RULES
31939 Peaches (fresh) grown in Ga.

Agriculture Department
See Agricultural Marketing Service; Forest Service; Soil Conservation Service.

Air Force Department
NOTICES
32019 Signal Corps female telephone operators in WWI; civilian or contractual personnel; determination of active military service and discharge

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings:
32044 Advisory committees; June

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
32014 Partial ingredient labeling of alcholic beverages; extension of comment period
NOTICES
32061 Firearms, granting of relief

Arts and Humanities, National Foundation
NOTICES
Meetings:
32053 Artists-in-Schools Advisory Panel
32053 Media Arts Advisory Panel
32053 Theater Advisory Panel (2 documents)

Blind and Other Severely Handicapped, Committee for Purchase From
PROPOSED RULES
Improving Government regulations:
32011 Regulatory agenda; semiannual

Civil Aeronautics Board
NOTICES
Hearings, etc.:
32015 American Airlines, Inc.
32015 Eastern Air Lines, Inc.
32015 National Airlines, et al.
32068 Meetings: Sunshine Act (2 documents)

Coast Guard
PROPOSED RULES
Regattas and marine parades; safety of life:
32004 Tank Vessel Operations; Puget Sound; correction
NOTICES
Meetings:
32059 New York Harbor Vessel Traffic Service Advisory Committee

Commerce Department
See Industry and Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
32068 Meetings; Sunshine Act (2 documents)

Comptroller of Currency
PROPOSED RULES
31984 Securities Exchange Act disclosure rules; conformance with SEC

Customs Service
RULES
Air commerce; vessels in foreign and domestic trade, etc.:
31950 Customs and navigation laws, violations; fines, penalties, forfeitures, and liquidated damages
Liquidation of duties; countervailing duties:
31972 Fasteners from Japan
Trademarks, trade names, and copyrights, etc.:
31962 Recordkeeping reports, trademarks, and disposition of forfeited distilled spirits, etc.; procedural reform
NOTICES
Countervailing duty petitions and preliminary determinations:
32062 Pig iron from Brazil

Defense Department
See Air Force Department; Defense Logistics Agency.

Defense Logistics Agency
RULES
31976 Procurement; correction

Economic Regulatory Administration
NOTICES
Remedial orders:
32021 Leo's-Winstead, Inc.

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Southeastern Power Administration.
NOTICES
Meetings:
32042 Emergency building temperature restriction program
32020 Waste isolation pilot plant; public hearings

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
31976 New Jersey
31980 Pennsylvania
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
32005 Arizona

Water pollution control:
32006 Judicial review under the Clean Water Act—forum shopping
NOTICES
Air quality criteria:
32042 Ozone and photochemical oxidants; policy clarification
Meetings:
32043 State-FIFRA Issues Research and Evaluation Group
Water pollution control; safe drinking water; public water systems designations:
32043 New Jersey

Farm Credit Administration
RULES
Loan policies and operations:
31940 Farm Credit System; nepotism policies

Federal Aviation Administration
RULES
Airworthiness directives:
31941, 31942 Piper (2 documents)
31947 Standard instrument approach procedures
31944–31946 Transition areas (5 documents)
31947 VOR Federal airways
31944 VOR Federal airways and reporting points
PROPOSED RULES
32001 Airspace, informal; meetings
32003 Restricted areas
32002 Transition areas
32001 VOR Federal airways
NOTICES
32094 Environmental impacts; consideration; policies and procedures
Meetings:
32060 Aeronautics Radio Technological Commission for Aeronautics
32187 Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee

Federal Deposit Insurance Corporation
NOTICES
32068 Meetings; Sunshine Act (2 documents)

Federal Election Commission
NOTICES
32070 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
31973 Arizona et al.
PROPOSED RULES
Flood elevation determinations:
32003 Iowa

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
32025 Arkansas Louisiana Gas Co.
32025 Belco Petroleum Corp.
32029 Cerro Wire & Cable Co. et al.
32030 El Paso Natural Gas Co.
32034 Logue & Patterson Inc.
32036 Mountain Fuel Supply Co.
32036 New York State Electric & Gas Corp.
32036 Oklahoma Natural Gas Co. et al.
32036, 32037 Panhandle Eastern Pipe Line Co. (2 documents)
32037 Petroleum Associates Fund, Inc., Operator
32039 Southern Natural Gas Co.
32039 Southern Natural Gas. Co. et al.
32039 South Texas Natural Gas Gathering Co. et al.
32041 Stephens & Cass
32040 Transcontinental Gas Pipe Line Corp. et al.
32042 Triton Oil & Gas Corp.
32042 United Gas Pipe Line Co.
32070, 32071 Meetings; Sunshine Act (2 documents)
Natural gas companies:
32038 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend
Natural Gas Policy Act of 1978:
32025–32038 Jurisdictional agency determinations (8 documents)

Federal Highway Administration
RULES
31981 Brake tubing, hose connection replacements, etc.; coordination with motor vehicle safety standards; correction

Federal Home Loan Bank Board
NOTICES
32071 Meetings; Sunshine Act

Federal Railroad Administration
NOTICES
Hazardous Materials:
32060 Louisville & Nashville Railroad Co.; emergency movement limitations; resumption of administrative hearing

Federal Trade Commission
RULES
Prohibited trade practices:
31949 Cavanaugh Communities Corp. et al.
31949 GAC Corp. et al.; correction
PROPOSED RULES
32013 Consumer applicances; labeling and advertising

Fine Arts Commission
NOTICES
32019 Meetings

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
32066 Mead Reinsurance Corp.

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
32047 Canaan Valley National Wildlife Refuge, Tucker County, W. Va.

Forest Service
PROPOSED RULES
32005 Timber; export and substitution restrictions; advance notice

General Accounting Office
NOTICES
32044 Regulatory reports review, proposals, approvals, etc. (NRC)

Health, Education, and Welfare Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Health Care Financing Administration; National Institutes of Health.
RULES
31981 Deletion of obsolete CFR Part

Health Care Financing Administration
RULES
Professional standards review:
32074 Hospital review procedures

Housing and Urban Development Department
NOTICES
32046 Urban homesteading; consumer forum

Indian Affairs Bureau
RULES
32190 Off-reservation treaty fishing, Columbia River Drainage Basin Chinook Salmon Fishery, Idaho

Industry and Trade Administration
NOTICES
Meetings:
32018 Computer Systems Technical Advisory Committee
Scientific articles; duty free entry:
32016 National Bureau of Standards
32018 University of Pennsylvania

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau.
NOTICES
Environmental statements; availability, etc.;
32048 Jackson, and Klamath, Sustained Yield Units Timber Management, Oreg.

International Trade Commission
NOTICES
Import investigations:
32048 Cattle whips
32049 Sugar from Canada

Interstate Commerce Commission
RULES
Railroad car service orders:
31982, 31983 Boxcars, substitution (2 documents)
Railroad car service orders; various companies:
31982 Burlington Northern Inc.
31982 Chicago & North Western Transportation Co.
PROPOSED RULES
32011 Tariffs, updated; predominant article theory in publication; applicability
NOTICES
Motor carriers:
32066 Securities issuances; jurisdiction; policy statement
Railroad operation, acquisition, construction, etc.:
32066 Missouri Pacific Railroad Co.

Justice Department
See also Parole Commission.
NOTICES
32052 U.S. v. United States Steel Corp.; proposed consent judgment in action to enjoin discharge of water pollutants

Land Management Bureau
NOTICES
Applications, etc.:
32046, 32047 Wyoming (3 documents)
Outer Continental Shelf:
32048 Oil and gas lease sales; Southern California; correction

Legal Services Corporation
RULES
31981 Eligibility, legal assistance; maximum income levels; correction

Management and Budget Office
NOTICES
32054 Agency forms under review

Mine Safety and Health Federal Review Commission
NOTICES
32071 Meetings; Sunshine Act

National Highway Traffic Safety Administration
NOTICES
Meetings:
32060 Fuel system integrity in 1970–73 Ford Maverick and 1971–73 Mercury Comet automobiles

National Institutes of Health
NOTICES
Meetings:
32045 Allergy and Clinical Immunology Research Committee; changes
32045 Cancer Control Grant Review Committee
32046 General Medicine B Study Section et al.; changes
32045 General Research Support Review Committee
32046 Transplantation Biology and Immunology Committee; changes

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
31983 Salmon fisheries; commercial and recreational, off Wash., Oreg., and Calif.; interim emergency regulations
PROPOSED RULES
Fishery conservation and management:
32012 Salmon fisheries, commercial and recreational, off Wash., Oreg., and Calif.
NOTICES
Coastal zone management programs; environmental statements, hearings, etc.:
32018 Elkhorn Slough Estuarine Sanctuary
Meetings:
32019 Gulf of Mexico Fishery Management Council
32019 South Atlantic Fishery Management Council (2 documents)

National Transportation Safety Board
NOTICES
32071 Meetings; Sunshine Act

Nuclear Regulatory Commission
RULES
31939 Uranium fuel cycle impacts; extension of time
NOTICES
Applications, etc.:
32054 Consumers Power Co.
32054 Public Service Co. of New Hampshire
Meetings:
32054 Reactor Safeguards Advisory Committee

Parole Commission
NOTICES
32071 Meetings; Sunshine Act

Postal Service
RULES
31976 Incorporations by reference

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
32015 Brundage Watershed, Idaho

Southeastern Power Administration
NOTICES
32021 Cumberland Basin Projects; interim approval of power rates

State Department
NOTICES
Authority delegations:
32059 Deputy Assistant Secretary of State, refugee and migration affairs
Bridge permits, applications:
32059 Donna, Tex.

Trade Negotiations, Office of Special Representative
NOTICES
Unfair trade practices, petitions:
32057 Argentina; marine insurance

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Comptroller of Currency; Customs Service; Fiscal Service.
NOTICES
Antidumping:
32063 Condenser paper from Finland
32063 Condenser paper from France

MEETINGS ANNOUNCED IN THIS ISSUE

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
32019 South Atlantic Fishery Management Council, Public Fact Finding Meeting, 6–19–79

COMMISSION OF FINE ARTS
32019 Washington, D.C. Appearance Projects, 6–28–79

ENERGY DEPARTMENT
32042 Emergency building temperature restrictions program, 6–8–79

ENVIRONMENTAL PROTECTION AGENCY
32043 State-FIFRA Issues Research and Evaluation Group, Working Committee on Enforcement, 6–5 and 6–6–79

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Voluntary Associations and Consumer Protection—
32046 Consumer Forum on Urban Homesteading, 7–12 and 7–13–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Alcohol, Drug Abuse, and Mental Health Administration—
32044 Community Alcoholism Services Review Committee, 6–20 through 6–25–79
32044 Drug Abuse Biomedical Research Review Committee 6–25 through 6–29–79
32045 Drug Abuse Clinical, Behavioral, and Psychological Research Committee, 6–25 through 6–29–79
32045 Drug Abuse Resource Development Review Committee, 6–25 through 6–28–79
National Institutes of Health—
32045 Cancer Control Grant Review Committee, 6–10 through 6–12–79
32045 General Research Support Review Committee, 6–28 and 6–29–79

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES
32053 Media Arts Advisory Panel, 6–18 and 6–19–79
32053 Theater Advisory Panel, 6–21 through 6–24–79
32053 Artists-in-schools Advisory Panel, 6–25 through 6–27–79

NUCLEAR REGULATORY COMMISSION
32054 Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems, 6–19 and 6–20–79

TRANSPORTATION DEPARTMENT
Coast Guard—
32059 New York Harbor Vessel Traffic Service Advisory Committee, 6–20–79
Federal Aviation Administration—
32187 Informal Airspace Meeting No. 57, 6–19, 6–21, 6–26, and 6–28–79
32060 Radio Technical Commission for Aeronautics, Special Committee 134 on Electronic Test Equipment for General Application, 6–28 and 6–29–79

RESCHEDULED MEETINGS

COMMERCE DEPARTMENT
Industry and Trade Administration—
32018 Computer Systems Technical Advisory Committee, Hardware Subcommittee, 6–11–79
National Oceanic and Atmospheric Administration—
32019 Gulf of Mexico Fishery Management Council, 7–10 through 7–13–79
32019 South Atlantic Fishery Management Council, Inter-Council Billfish Steering Committee, 6–8–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
National Institutes of Health—
32045 Allergy and Clinical Immunology Research Committee, 6–12–79
32046 General Medicine B Study Section, 6–28 through 6–30–79 and Microbial Chemistry Study Section, 6–7 and 6–8–79
32046 Transplantation Biology and Immunology Committee, 6–15–79

HEARINGS

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
32018 Office of Coastal Zone Management, 6–20–79

ENERGY DEPARTMENT
32020 Waste Isolation Pilot Plant, 6–5, 6–7 through 6–9–79

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration—
32060 1970–73 Ford Maverick and 1971–73 Mercury Comet, 7–13–79

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.

7 CFR
918.....31939

10 CFR
51.....31939

12 CFR
612.....31940
614.....31940
Proposed Rules:
11.....31984

14 CFR
39 (2 documents).....31941, 31942
71 (7 documents).....31944–31947
97.....31947
Proposed Rules:
Ch. I.....32001
71 (2 documents).....32001, 32002
73.....32003

16 CFR
13 (2 documents).....31949
Proposed Rules:
305.....32013

19 CFR
4.....31950
6.....31950
10 (2 documents).....31950, 31962
11.....31962
18.....31962
19.....31962
54.....31962
111.....31962
112.....31962
123.....31950
133.....31962
134.....31962
148.....31962
151.....31962
159.....31972
162 (2 documents).....31950, 31962
171.....31950
172.....31950

24 CFR
1914.....31973
Proposed Rules:
1917.....32003

25 CFR
256.....32190

27 CFR
Proposed Rules:
4.....32014
5.....32014
7.....32014

32 CFR
1201.....31976
1203.....31976
1212.....31976
1214.....31976
1216.....31976
1220.....31976
1221.....31976
1250.....31976

33 CFR
Proposed Rules:
161.....32004

36 CFR
Proposed Rules:
223.....32005

39 CFR
10.....31976
111.....31976
601.....31976

40 CFR
52 (2 documents).....31976, 31980
Proposed Rules:
52.....32005
100.....32006

41 CFR
Proposed Rules:
Ch. 51.....32011

42 CFR
466.....32074

45 CFR
5a.....31981
1611.....31981

49 CFR
393.....31981
1033 (4 documents).....31982, 31983
Proposed Rules:
1300.....32011

50 CFR
661.....31983
Proposed Rules:
661.....32012

Rules and Regulations

Federal Register
Vol. 44, No. 108
Monday, June 4, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Peach Regulation 1, Amendment 1]

Fresh Peaches Grown in Georgia; Grade and Size Requirements

AGENCY: Agricultural Marketing Service.

ACTION: Amendment to final rule.

SUMMARY: This action permits Georgia peaches with additional types of pit disorders to be shipped. Such action is designed to promote orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This amendment is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Industry Committee, established under this marketing order, and upon other information. It is hereby found that this amendment will tend to effectuate the declared policy of the act. This amendment has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on May 27, 1979, to consider crop and market conditions and other factors relating to the need for amending the current regulation. It recommended that peaches affected by pit disorders, including gum spots, split pits, and shattered pits, be permitted to be shipped exempt from the grade requirements now in effect. Currently, only split pits not scored as serious damage are exempt from the grade requirement. The committee reports that unusual growing conditions have accelerated the maturity of the fruit without a corresponding proper development of the pit. This amendment would permit peaches affected with such pit disorders to be shipped, provided they met the other grade and size requirements of the regulation.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because this action is a relaxation of restrictions and because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

Accordingly, paragraph (a)(1) in § 918.321 Peach Regulation 1 (44 FR 25191), is amended to read as follows:

§ 918.321 Peach Regulation 1.

(a) No handler shall ship, except peaches in bulk to destinations in the adjacent markets, any peaches which:

(1) During the period May 1 through August 31, 1979, do not grade at least 85 percent U.S. No. 1 quality: *Provided,* That peaches with well healed hail marks, peaches affected by pit disorders (including gum spots, and split or shattered pits), or peaches with not more than one percent decay, may be shipped if they otherwise meet the requirements of this subparagraph.

* * * * *

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

Dated, May 29, 1979, to become effective May 29, 1979.

D. S. Kuryloski,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-17239 Filed 6-1-79; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts for Spent Fuel Reprocessing and Radioactive Waste Management; Extension of Interim Fuel Cycle Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the interim fuel cycle rule.

SUMMARY: The Commission promulgated March 14, 1977 (42 FR 13803) an interim rule identifying the environmental impact values for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission has made four extensions for the period of effectiveness of the interim rule. The most recent extension enlarged this period to May 30, 1979. The Commission now finds good cause to enlarge this period until July 30, 1979.

DATES: The interim rule published at 42 FR 13803, March 14, 1977 (10 CFR 51.20(e)) is extended until July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Leo Slaggie, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 202-634-3224.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Nuclear Regulatory Commission has extended through July 30, 1979 the effectiveness of the interim fuel cycle 10 CFR 51.20(e) ("table S-3," as revised). The Commission finds this extension desirable to consider its course of action in light of the D.C. Circuit's decision in

State of Minnesota v. *NRC*, No. 78–1269 (May 23, 1979).

Background

The status of the Commission's interim fuel cycle rule and the course of the final rulemaking up to the submission of the Hearing Board's report on the extensive evidentiary record were reviewed in the notice of September 18, 1978 (43 FR 41373), which extended the interim rule through March 14, 1979. Additional extensions have proved necessary, most recently because the Commission needed additional time to complete the formal adoption of the statement of consideration drafted to accompany the rule.

While that consideration was proceeding, and before the Commission formally adopted the Statement of Consideration, the D.C. Circuit on May 23 decided *State of Minnesota* v. *NRC*, a case bearing upon waste disposal issues now pending before the Commission in the context of the S–3 proceeding. In order to consider fully the D.C. Circuit's decision the Commission therefore finds good cause again to extend the period of effectiveness of the interim rule, this time through July 30, 1979.

Dated at Washington, D.C. this 29th day of May, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR. Doc. 79–17247 Filed 6–1–79; 8:45 am]

BILLING CODE 7590–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 612 and 614

Personnel Administration; Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, took final action to amend its general rules dealing with the personnel administration of the institutions of the Farm Credit System. The amendment concerns the employment of relatives by the institutions and is intended to clarify which employment relationships are prohibited.

EFFECTIVE DATE: April 4, 1979.

FOR FURTHER INFORMATION CONTACT: Sanford A. Belden, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, D.C. 20578, 202–755–2181.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** on December 26, 1978, interested persons were afforded the opportunity to file written comments or suggestions on the proposed amendments. Five comments suggesting substantive changes were received. Two comments suggested that the regulations merely provide guidelines under which each Farm Credit district board would adopt policies on nepotism to be applicable to the institutions in its district. It was determined that, in order to be fair and equitable, restrictions as to the employment of relatives by Farm Credit institutions should be uniform throughout the System. Therefore, the suggestion was not adopted. Two comments concerned the regulation's coverage of attorneys; one suggested that association attorneys be excluded from coverage; the other suggested that questions as to whether the restrictions applied to association attorneys should not be decided on a case basis. It was determined that attorneys should be treated in the same manner as any other person engaged by a Farm Credit institution to perform a professional service for a fee or other compensation. Therefore, no change in the proposed regulation was made. However, it may become necessary to determine, on the basis of the circumstances of a particular case, whether or not an attorney is engaged by a Farm Credit institution for a fee or other compensation. The fifth comment suggested that the effective date of the regulations be postponed to allow sufficient time for implementation. Inasmuch as the regulation applies only to prospective employments and does not require the removal of any person lawfully serving in a position on the date of adoption, it was determined that there was no substantive need to postpone the effective date to allow for implementation.

Chapter VI of Title 13 of the Code of Federal Regulations is amended by revising § 612.2030 as follows:

PART 612—PERSONNEL ADMINISTRATION

§ 612.2030 Nepotism.

(a) To emphasize and assist the merit system of appointments and promotions of salaried officers and employees of the institutions of the Farm Credit System, the following restrictions shall be observed:

(1) A relative of a director of a Farm Credit institution shall not serve as a salaried officer or employee of that institution.

(2) A relative of a director of a Farm Credit bank shall not serve as chief executive officer of an association supervised by that bank.

(3) A person shall not serve as a salaried officer or employee of a Farm Credit institution in any position which is directly or indirectly supervised by a relative except that this restriction shall not apply when the salaried officer or employee of an association is other than a chief executive officer and the relationship is with a director, an officer, or an employee of the supervising bank.

(4) Notwithstanding the other provisions of this paragraph (a), a person may serve as a salaried officer or employee in a position directly or indirectly supervised by a relative for period in any calendar year not exceeding a total of 75 workdays provided that positive documented efforts have been made to recruit a qualified nonrelative for the position.

(b) The term "relative" as used in this section means parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, first cousin, nephew, niece, spouse, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandson, granddaughter, and any person having a similar relationship by marriage.

(c) Any person engaged by a Farm Credit institution to provide professional services for a fee or other compensation is considered to be within the term "salaried officer or employee" for the purpose of this section.

(d) The provisions of this section shall not preclude any person involved in a nepotistic relationship allowable under previous regulations from continuing to serve in a position occupied by him or her on the effective date of this regulation.

(e) To prevent the creation of relationships prohibited under this regulation, the following actions shall be taken:

(1) Each bank shall establish the mechanism by which a nominee for a director position is informed of the provisions of this section. Specifically, a nominee whose election would create a prohibited relationship must be fully aware of the consequences of his or her election.

(2) Prior to the employment or promotion of a person, the institution shall determine whether a prohibited relationship would be created by the action.

(3) Stockholders shall be notified prior to any election of those nominees whose election would create a prohibited relationship.

(Secs. 5.9, 5.12, 5.18, 85 Stat. 619, 620, 621).

Donald E. Wilkinson,

Governor.

[FR Doc. 79-17160 Filed 6-1-79; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-SO-30; Amdt. 39-3483]

Piper Model PA-31 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the inspection, on both engines, of the Piper PA-31 turbocharger exhaust flanges, couplings, and coupling bolts for evidence of damage or failure and requires component replacement, if necessary. This AD is prompted by reports of broken and damaged turbocharger exhaust system components which result in a potential fire hazard and has resulted in at least one powerplant fire.

DATES: Effective June 8, 1979. Compliance schedule as prescribed in body of AD.

ADDRESSES: The Applicable service bulletin may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. A copy of the Service Bulletin is contained in the AD docket file and may be examined in Room 275, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Gil Carter, ASO-214, Propulsion Section, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: There have been reports of broken and damaged turbocharger exhaust flange couplings and coupling bolts on Piper Model PA-31 Series airplanes. There has been at least one incident requiring inflight engine shutdown attributable to a broken exhaust coupling which caused extensive exhaust fire damage.

Since this condition is likely to exist or develop in other airplanes of the same type design, an Airworthiness Directive is being issued which requires the inspection of turbocharger exhaust flanges, couplings, and coupling bolts for cracks, damage, and distortion on certain Piper Model PA-31 Series airplanes. The AD also requires component replacement, if necessary.

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

Adoption of the Amendment

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

Piper Aircraft Corporation. Applies to Models PA-31, serial numbers 31-2 and up; PA-31-325, serial numbers 31-7300932 and up; and Model PA-31-350, serial numbers 31-5001 and up; airplanes certificated in all categories.

Compliance required within the next 50 hours' time in service after the effective date of this AD unless already accomplished within the last 50 hours' time in service, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection.

To prevent the possibility of a powerplant fire due to an exhaust system failure, accomplish the following on both engine installations:

(a) Gain access to the turbocharger exhaust systems.

(b) Remove the turbocharger exhaust couplings and tailpipes (see Figure).

Note: Any time an exhaust system coupling is installed or removed, prevent spreading or forcing the coupling beyond its normal open position.

(c) Using either a dye penetrant inspection method or a light and a 10-power magnifying glass, accomplish the following inspections:

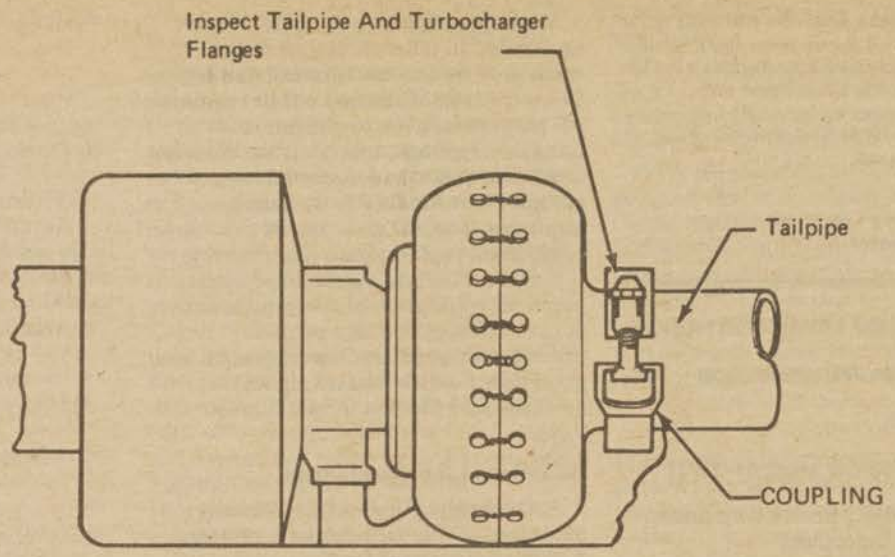
(1) Inspect coupling for cracks, spreading of "V" band segments, failed spot welds, and indication of exhaust flanges bottoming in coupling (see Figure).

(2) Inspect the condition of the coupling clamp bolt for bending, overstress, thread damage and cracks (see Figure).

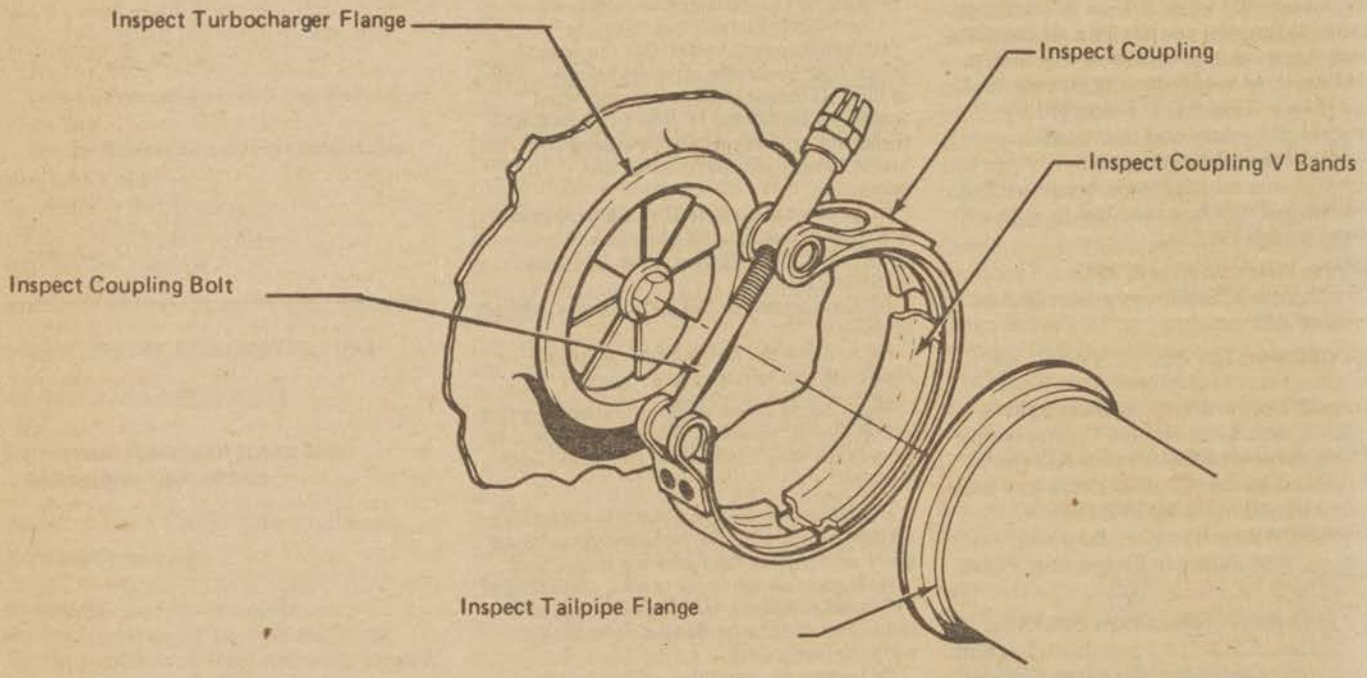
(3) Inspect turbocharger to turbocharger exhaust tailpipe connection area for proper mating of surfaces.

(4) Inspect tailpipe and turbochargers flanges for cracks and distortion (see Figure). Remove carbon deposits from mating flanges before reassembly.

BILLING CODE 4910-13-M



VIEW LOOKING AFT AT TURBOCHARGER



Figure

BILLING CODE 4910-13-C

(d) Replace any cracked, distorted or otherwise damaged component(s) with serviceable parts before further flight.

(e) Install couplings (see note following (b) above) assuring that the tailpipe and turbocharger flanges are properly aligned. Tap the coupling gently to distribute band tension while tightening the coupling nut. Torque the coupling nuts as follows:

Model	Piper Clamp P/N (Aeroquip P/N)	Torque
PA-31	455 301 (4404-376-M)	40-50 in.-lbs.
	555 376 (MVT68049-375-H or MVT68049-375-D)	40-50 in.-lbs.
	555 511 (MVT69861-377-M)	40-50 in.-lbs.
PA-31-325	555-511 (MVT69861-377-M)	40-50 in.-lbs.
PA-31-350	555-366 (MVT68049-450-M)	45-55 in.-lbs.

(f) Make an appropriate maintenance record entry.

(g) An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

Note.—Piper Service Bulletin 644 pertains to this subject.

This amendment becomes effective June 8, 1979.

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

Issued in East Point, Georgia, on May 23, 1979.

Phillip M. Swatek,

Director, Southern Region.

[FR Doc. 79-17229 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-SO-40; Amdt. No. 39-3484]

Piper Aircraft Corp., Models PA-31, PA-31-300, PA-31-325, PA-31-350, PA-31P, PA-31T, and PA-31T1; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection of the elevator stop bolts, a check of elevator surface travel, retorqueing of stop bolt lock nuts, and adjustment and/or repair of elevator system hardware as necessary on certain Piper PA-31 series airplanes. Also, this amendment requires a report to the FAA of any problems found in the inspections done to accomplish this AD. This AD is prompted by three reports of elevator stop bolts backing out, three reports of stop bolt heads shearing off, three reports of loose screws, and four reports of loose lock nuts. If the elevator stop bolts back out, they could excessively restrict the range of elevator surface travel which could adversely affect controllability of the airplane.

DATES: June 14, 1979. Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Service Bulletin No. 649 may be obtained from Piper Aircraft Corporation, Lock Haven Division, Lock Haven, Pennsylvania 17745, telephone (707) 748-6711. A copy of the Service Bulletin is also contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been three reports of elevator stop bolts backing out, three reports of stop bolt heads shearing off, three reports of loose screws, and four reports of loose lock nuts on Piper PA-31 aircraft. If the elevator stop bolts back out, they could excessively restrict the range of elevator surface travel which could adversely affect controllability of the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being issued which requires inspection of the elevator stop bolts and lock nuts, retorqueing of the lock nuts, and a check of elevator surface travel range on Piper Model PA-31 series airplanes. Also, a report to the FAA of discrepancies found is required.

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

Adoption of the Amendment

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

Piper Aircraft Corporation: Applies to the following Model PA-31 series airplanes, certificated in all categories: PA-31, PA-31-300, PA-31-325, S/N 31-5 through 31-7912049 inclusive, PA-31P, S/N 31P-1 and up; PA-31T, S/N 31T-7400002 through 31T-7920060 inclusive, and PA-31T1, S/N 31T-7804001 through 31T-7904031 inclusive.

Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent the possible restriction of elevator surface travel, accomplish the following:

a. Remove the upper and lower tail cone halves and gain access to the elevator hinge assembly (Piper P/N 40249-00, 45253-00 or 45253-03 as applicable).

b. Inspect the elevator stop bolts (Piper P/N 419 991) and lock nuts (Piper P/N 404 224) for signs of looseness or damage, or evidence of movement. Repair or replace, as necessary, in accordance with the airplane service manual.

c. Verify proper elevator travel in accordance with Section 5 of the airplane service manual. Elevator surface travel limits are also given in the airplane Type Certificate Data Sheet.

d. Torque elevator stop bolt lock nuts to 20-25 inch/pounds, and recheck elevator surface travel.

e. Paint or install a slip stripe or torque seal on lock nuts and stop bolts.

f. Reinstall tail cone.

g. If above inspections find any indications of loose or damaged stop bolts and/or lock nuts, or if elevator surface travel does not meet specification surface travel limits, report findings within 10 days to Chief, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, also giving the airplane serial number, the owner/operator of the airplane, and the person and/or facility conducting the inspection. (Reporting approved by the Office of Management and Budget under OMB No. 04-70174).

Piper Service Bulletin No. 649 also pertains to this subject.

Compliance with the provisions of this AD may be accomplished in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

This amendment is effective June 14, 1979.

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

Issued in East Point, Georgia, on 5-23-79

Phillip M. Swatek,

Director, Southern Region.

[FR Doc. 79-17230 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 78-EA-17]

Alteration of Federal Airways and Reporting Points; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters V-16, V-34, V-46 and V-91 airways because of the relocation of the Riverhead, N.Y. VORTAC to Lat. 40°55'47"N., Long. 72°47'57"W., and renaming it Calverton, N.Y. The SAYBO reporting point is no longer on an airway and requires relocating and renaming. The name "FLIBB" has been selected for this relocated reporting point. The expired land lease of the Riverhead location cannot be renewed. For this reason, the VORTAC relocation and airway alterations are required.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On July 3, 1978, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign 4 airways, relocate and rename a reporting point (43 FR 28817). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The three comments received expressed no objection to the proposal. Sections 71.123 and 71.203 of Part 71 were republished in the Federal Register on January 2, 1979 (44 FR 307, 637).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns V-16 and V-46 via Calverton. It realigns V-34 to the INT of Carmel, N.Y. 093°T (105°M) and Calverton 044°T (057°M) radials. It realigns V-91 to begin at Calverton and extend via the INT of Calverton 332°T (345°M) and Pawling, N.Y. 139°T (151°M) radials. It also renames the SAYBO reporting point FLIBB at the new intersection of V-16 and V-34. This action was caused by relocating the Riverton VORTAC to Calverton.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 71.123 and Section 71.203, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307, 637) and amended (44 FR 1087) is further amended, effective 0901 GMT, August 9, 1979, as follows:

In Section 71.123:

1. Under V-16 "Riverhead" is deleted and "Calverton" is substituted therefor;
2. Under V-34 "Riverhead, N.Y., 046°" is deleted and "Calverton, N.Y., 044°" is substituted therefor;
3. Under V-46 "Riverhead, N.Y.;" is deleted and "Calverton, N.Y.;" is substituted therefor, and;
4. Under V-91 "From Riverhead, N.Y., INT Riverhead 344°" is deleted and "From Calverton, N.Y., via INT Calverton, 332°" is substituted therefor.

Under Section 71.203, "SAYBO" title and text are deleted and "FLIBB: INT Carmel, N.Y., 093° and Calverton, N.Y., 044° radials." is added.

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

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

Issued in Washington, D.C., on May 24, 1979.

William E. Broadwater

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-17237 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-SO-38]

Alteration of Transition Area, Sebring, Florida; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Sebring, Florida, Transition area. The final approach course of the NDB RWY 36 Standard Instrument Approach Procedure will be changed from 343° to 340°. It is, therefore, necessary to alter the transition area extension to reflect this change.

EFFECTIVE DATE: 0901 GMT, August 9, 1979.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: The Sebring, Florida, NDB RWY 36 final approach course is being changed from 343° to 340°. It is, therefore, necessary to alter the transition area extension predicated on the final approach course. Since this change is minor in nature, notice and public procedure hereon are not considered necessary.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, August 9, 1979, as follows:

Sebring, Fla.

"* * * each side of the 164° bearing * * *" is deleted, and "each side of the 161° bearing * * *" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

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

Issued in East Point, Georgia, on May 23, 1979.

Phillip M. Swatek,

Director, Southern Region.

[FR Doc. 79-17231 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-6]

Designation of Transition Area—Cambridge, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Cambridge, Nebraska, to provide controlled airspace for aircraft executing new instrument approach procedures to Runways 14 and 32 on the Cambridge, Nebraska Airport based on the Nondirectional Radio Beacon (NDB), a navigational aid installed on the airport. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: New instrument approach procedures to Runways 14 and 32 at the Cambridge, Nebraska Airport are being established utilizing a Nondirectional Radio Beacon, a navigational aid installed on the airport. The establishment of new instrument approach procedures to Runways 14 and 32, based on this navigational aid, entails designation of a transition area at Cambridge, Nebraska, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedures under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 15731 and 15732 of the **Federal Register** dated March 15, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Cambridge, Nebraska. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making. Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442), is amended effective 0901 GMT August 9, 1979, by adding the following new transition area:

Cambridge, Nebraska

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Cambridge, Nebraska Airport (latitude 40°18'20"N; longitude 100°09'43"W); within 3 miles each side of the Cambridge NDB 165° bearing extending from the 7-mile radius area to 8.5 miles southeast of the airport; within 3 miles each side of the Cambridge NDB 326° bearing extending from the 7-mile radius area to 8.5 miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

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

Issued in Kansas City, Missouri, on May 24, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-17232 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-1]

Alteration of Transition Area—Marshalltown, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Marshalltown, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Marshalltown, Iowa Municipal Airport, utilizing the Elmwood VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: A new instrument approach procedure to the Marshalltown Municipal Airport, Marshalltown, Iowa, has been established utilizing the Elmwood VOR as a navigational aid. The establishment of a new instrument approach procedure based on this approach aid, entails the alteration of the transition area at Marshalltown, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 12044 and 12045 of the **Federal Register** dated March 5, 1979, the Federal Aviation Administration published a Notice of Proposed Rule making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Marshalltown, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181, of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442), is amended, effective 0901 GMT, August 9, 1979, by altering the following transition area:

Marshalltown, Iowa

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Marshalltown Municipal Airport (latitude 42°06'45"N, longitude 92°54'50"W) and within three miles each side of the 321° bearing from Marshalltown Municipal Airport, extending from the 6-mile radius area to 8 miles northwest of the airport; and within 3 miles each side of the 135° radial of the Elmwood VOR extending from the 6-mile radius to 8 miles southeast of the airport; and within 3 miles each side of the 303° radial of the Elmwood VOR extending from the 6-mile radius to 8 miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c),

Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

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

Issued in Kansas City, Missouri on May 22, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-17226 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-CE-4]

Designation of Transition Area—Brookfield, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Brookfield, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Brookfield, Missouri Municipal Airport based on the Non-Directional Radio Beacon (NDB) a navigational aid being installed on the airport by the City of Brookfield. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Brookfield Municipal Airport, Brookfield, Missouri, is being established based on a Non-Directional Radio Beacon (NDB) a navigational aid being installed on the airport by the city of Brookfield. The establishment of an instrument approach procedure based on this approach aid, entails the designation of a transition area at Brookfield, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 11558 of the **Federal Register** dated March 1, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Brookfield, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442) is amended effective 0901 GMT, August 9, 1979, by adding the following new transition area:

Brookfield, Missouri

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Brookfield Municipal Airport (latitude 39°45'40" N; longitude 93°06'17" W) and within 3 miles each side of the 320° bearing from the Brookfield, Missouri nondirectional beacon (latitude 39°45'55" N; longitude 93°06'39" W), extending from the 5-mile radius area to 8 miles northwest of the nondirectional beacon.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61, Federal Aviation Regulations (14 CFR 11.61).)

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

Issued in Kansas City, Missouri on May 22, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-17227 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-5]

Designation of Transition Area—Plattsmouth, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Plattsmouth, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Plattsmouth, Nebraska Municipal Airport based on the Nondirectional Radio Beacon (NDB), a navigational aid installed on the airport. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Benny J. Kirk, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Plattsmouth Municipal Airport, Plattsmouth, Nebraska is being established based on a Nondirectional Radio Beacon (NDB), a navigational aid installed on the airport. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Plattsmouth, Nebraska, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 12044 of the **Federal Register** dated March 5, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Plattsmouth, Nebraska. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections

were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 GMT August 9, 1979, by adding the following new transition area:

Plattsmouth, Nebraska

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Plattsmouth Municipal Airport (latitude 40°57'05"N; longitude 095°55'05"W) within 3 miles each side of the 176° bearing from the Plattsmouth Municipal Airport, extending from the 5-mile radius to 8 miles south of the airport; excluding the portion within the Omaha, Nebraska transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61, Federal Aviation Regulations (14 CFR 11.61).)

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

Issued in Kansas City, Missouri, on May 22, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR. Doc. 79-17228 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-08]

Alteration of Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of the amendment is to delete the 3,500 ft. MSL floor on V-26 between Pierre and Huron, S. Dak. This action reduces chart clutter by removing an airway floor designation that serves no purpose. Transition area airspace has recently been designated that incorporates the airspace within the lateral limits of V-26 between Pierre and Huron.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR 71) is to delete an airway floor that has become unnecessary because of previous designation of underlying transition area airspace (Airspace Docket No. 79-RM-08, effective June 14, 1979). Since this amendment receives an unnecessary restriction and is a minor matter on which the public would have no particular desire to comment, public notice and procedures thereon are unnecessary. The effective date of this rule is more than 30 days after publication in the **Federal Register** and is coincidental to a charting date.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 GMT, August 9, 1979, as follows:

Under V-26 after Pierre, S. Dak., "including a north alternate; 26 miles, 41 miles, 35 MSL, Huron, S. Dak." is deleted and "including a north alternate; Huron, S. Dak." is substituted therefor.

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

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

Issued in Washington, D.C., on May 25, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-17234 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 19166; Amdt. No. 1139]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination—

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

For Purchase—Individual SIAP copies may be obtained from:

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

By Subscription—

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

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

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

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

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

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

Adoption of the Amendment

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

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

. . . Effective August 9, 1979

Flippin, AR—Marion County Regional, VOR-A, Amdt. 7
Mountain Home, AR—Mountain Home Muni., VOR-A, Amdt. 3

. . . Effective July 26, 1979

Alexandria, MN—Chandler Field, VOR Rwy 22, Amdt. 11
Columbus, MS—Columbus Loundes County, VOR-A, Amdt. 9
Florence, SC—Florence City-County, VOR-A (TAC), Amdt. 3

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, VOR Rwy 2, Amdt. 7
Sacramento, CA—Sacramento Executive, VOR/DME Rwy 20, Amdt. 5, cancelled
Vacaville, CA—Nut Tree, VOR-A, Amdt. 2
Centralia, IL—Centralia Municipal, VOR Rwy 36, Amdt. 12
DeKalb, IL—DeKalb Municipal, VOR/DME Rwy 27, Original
Effingham, IL—Effingham County Memorial, VOR Rwy 1, Amdt. 3
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 5, Amdt. 12
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 13, Amdt. 11
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 23, Amdt. 14
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 31, Amdt. 9
Manistique, MI—Schoolcraft County, VOR Rwy 27, Amdt. 4
Newberry, MI—Luce County Hale, VOR Rwy 11, Amdt. 6
Newberry, MI—Luce County Hale, VOR Rwy 29, Amdt. 6
Minneapolis, MN—Crystal, VOR-A, Amdt. 6
Lancaster, OH—Fairfield County, VOR-A, Amdt. 2

. . . Effective June 28, 1979

St. Louis, MO—Spirit of St. Louis, VOR Rwy 7, Amdt. 2

. . . Effective June 1, 1979

Chagrin Falls, OH—Chagrin Falls, VOR-A, Amdt. 5, cancelled

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

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, LOC BC Rwy 20, Amdt. 5, cancelled
Colorado Springs, CO—City of Colorado Springs Muni., LOC BC Rwy 17, Amdt. 1, cancelled
Lancaster, OH—Fairfield County, SDF Rwy 28, Original

. . . Effective June 14, 1979

Honolulu, HI—Honolulu International, LDA/DME Rwy 26L, Orig.

The FAA published an amendment in Docket No. 18942, Amdt. No. 1136 to Part 97 of the Federal Aviation regulations (Vol 44 FR No. 77 page 23210; dated Thursday, April 19, 1979) under section 97.25 effective June 14, 1979, which is hereby amended as follows:

Greensboro, NC—Greensboro-High Point-Winston-Salem regional, LOC BC Rwy 5, Amdt. 2, Cancelled is rescinded.

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

. . . Effective August 9, 1979

Boise City, OK—Boise City, NDB-A, Original
Dillon, SC—Dillon County, NDB Rwy 6, Amdt. 1
Clintonville, WI—Clintonville Municipal, NDB Rwy 32, Amdt. 4

. . . Effective July 26, 1979

Gaylord, MI—Otsego County, NDB Rwy 9, Amdt. 1
Waupaca, WI—Waupaca Municipal, NDB Rwy 30, Amdt. 1

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, NDB Rwy 2, Amdt. 7
Colorado Springs, CO—City of Colorado Springs Muni., NDB Rwy 35, Amdt. 22
Litchfield, IL—Litchfield Municipal, NDB Rwy 27, Amdt. 1
Harrisburg, IL—Harrisburg-Raleigh, NDB Rwy 24, Amdt. 5

Sparta, IL—Sparta Community-Hunter Field, NDB Rwy 18, Amdt. 3
De Ridder, LA—Beauregard Parish, NDB Rwy 18, Amdt. 2
De Ridder, LA—Beauregard Parish, NDB Rwy 36, Amdt. 1
Jackson, MI—Jackson County-Reynolds Field, NDB Rwy 23, Amdt. 6
Smithfield, NC—Johnston County, NDB Rwy 21, Amdt. 1
Lancaster, OH—Fairfield County, NDB Rwy 28, Original

. . . Effective June 28, 1979

St. Louis, MO—Spirit of St. Louis, NDB Rwy 7, Amdt. 5

. . . Effective May 15, 1979

Appleton, WI—Outagamie County, NDB Rwy 3, Amdt. 7
Appleton, WI—Outagamie County, NDB Rwy 11, Amdt. 7, cancelled
Appleton, WI—Outagamie County, NDB Rwy 21, Amdt. 4, cancelled

Appleton, WI—Outagamie County, NDB Rwy 29, Amdt. 8, cancelled

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

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, ILS Rwy 2, Amdt. 20
Colorado Springs, CO—City of Colorado Springs Muni., ILS Rwy 17, Original
Colorado Springs, CO—City of Colorado Springs Muni., ILS Rwy 35, Amdt. 30
Valdosta, GA—Valdosta Municipal, ILS Rwy 35, Amdt. 3
Jackson, MI—Jackson County-Reynolds Field, ILS Rwy 23, Amdt. 6
Myrtle Beach, SC—Myrtle Beach AFB/Civil Jet Port, ILS Rwy 17, Orig, cancelled

. . . Effective June 28, 1979

Denver, CO—Stapleton Int'l ILS/DME Rwy 17L, Original
St. Louis, MO—Spirit of St. Louis, ILS Rwy 7, Amdt. 5

. . . Effective May 23, 1979

Memphis, TN—Memphis International, ILS Rwy 17R, Amdt. 5

. . . Effective May 15, 1979

Appleton, WI—Outagamie County, ILS Rwy 3, Amdt. 8

The FAA published an amendment in Docket No. 18942, Amdt. No. 1136 to Part 97 of the Federal Aviation regulations (Vol. 44 FR No. 77 page 23210; dated Thursday, April 19, 1979) under section 97.29 effective June 14, 1979, which is hereby amended as follows:

Greensboro, NC—Greensboro-High Point-Winston-Salem regional, ILS Rwy 5, original is rescinded.

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

. . . Effective July 12, 1979

Colorado Springs, CO—City of Colorado Springs, Muni., RADAR–1, Amdt. 16
Baton Rouge, LA—Ryan, RADAR–1, Amdt. 4
Duluth, MN—Duluth International, RADAR–1, Amdt. 14

. . . Effective May 3, 1979

Louisville, KY—Standiford Field, RADAR–1, Amdt. 15

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

. . . Effective July 12, 1979

Lancaster, OH—Fairfield County, RNAV Rwy 10, Amdt. 1

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

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

Issued in Washington, D.C. on May 25, 1979.

James M. Vines,

Chief, Aircraft Programs Division.

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

[FR Doc. 79–17238 Filed 6–1–79; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

Prohibited Trade Practices and Affirmative Corrective Actions; GAC Corp., et al.

Correction

In FR Doc. 79–15127 appearing on page 28305 in the issue of Tuesday, May 15, 1979, in the first column of page 28306, in the third line of the fifth complete paragraph, ". . . continue this contract . . ." should have read ". . . continue this contract or . . ."

BILLING CODE 1505–01–M

16 CFR Part 13

[Docket 9055]

Prohibited Trade Practices and Affirmative Corrective Actions; Cavanagh Communities Corp., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Miami, Fla. land sales firm and eight wholly owned subsidiaries to cease misrepresenting or failing to disclose the nature and purpose of promotional activities; the legal significance of signing a contract form; the monetary risks involved in the purchase of undeveloped land; and the advisability of consulting with a real estate specialist prior to purchase. Unavailability of utilities, sewage disposal, water, or other improvements have to be set forth in contracts and sales presentations, and the firms are required to provide purchases with a cooling-off period during which they could cancel their dealings. The order also requires that purchasers be informed that certain subdivisions are located in designated flood areas and considerable expenditure would be required to make lots usable. Any sales representation concerning the availability of electricity, phone service, recreational facilities, and/or other improvements has to be contractually guaranteed, and failure to fulfill such obligations in a timely manner entitles purchasers to a refund of their full purchase price plus 7% interest. In addition, the order limits purchasers' liability in the event of default, and requires the firms to send previous purchasers prescribed "truth" letters which contain information about investments, subdivision development, assessments, contractual rights, and possible tax benefits should purchasers default.

DATES: Complaint issued Sept. 16, 1975. Decision issued May 3, 1979.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PM, Edward D. Steinman, Washington, D.C., 20580. (202) 523–3909.

SUPPLEMENTARY INFORMATION: On Wednesday, January 3, 1979, there was published in the **Federal Register**, 44 FR 899, a proposed consent agreement with analysis In the Matter of Cavanagh Communities Corporation, Cape Cave Corporation, Cavanagh Marketing Corporation, Cavad, Inc., Universal Properties, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm Beach Investment Properties, Inc., Perdido Bay Management Corp., corporations, and their subsidiaries, and Joseph Klein and Arthur Meltzer, individually and as officers of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of

[1] Copies of the Complaint, Order Granting In Part And Remanding In Part Motion To Serve Supplemental Pleading, Motion To Amend Complaint, and Decision and Order are filed with the original document.

merchandise and/or facilities; § 13.15 Business status, advantages or connections; 13.15–20 Business methods and policies; 13.15–30 Connections or arrangements with others; 13.15–35 contracts and obligations; 13.15–240 Properties and rights; 13.15–245 Prospects; 13.15–275 Stock, product, or service; § 13.35 Condition of goods; § 13.55 Demand, business or other opportunities; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; 13.155–5 Additional charges unmentioned; § 13.160 Promotional sales plans; § 13.175 Quality of product or service; § 13.185 Refunds, repairs, and replacements; § 13.195 Safety; 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.275 Undertakings, in general; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–15 Destruction of records and/or data; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–55 Refunds, rebates and/or credits; 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed; § 13.677 Delaying or failing to deliver goods or provide services or facilities. Subpart—Failing To Provide Foreign Language Translations: § 13.1052 Failing to provide foreign language translations. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1365 Authorities and personages connected with; § 13.1370 Business methods, policies, and practices; § 13.1395 Connections and arrangements with others; § 13.1435 History; § 13.1540 Reputation, success or standing; § 13.1560 Stock, product or service.—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1595 Condition of goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1710 Qualities or properties; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts; § 13.1760 Terms and conditions; 13.1760–50 Sales contract; § 13.1765 Undertakings, in general; § 13.1775 Value.—Prices: § 13.1778 Additional costs unmentioned.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1857 Instruments' sale to finance companies; § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882–10 Additional prices unmentioned; § 13.1885 qualities or properties; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905–50 Sales contract. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.1955 Free goods; § 13.2013 Offers deceptively made and evaded; § 13.2015 Opportunities in product or service; § 13.2040 Returns and reimbursements; § 13.2063 Scientific or other relevant facts; § 13.2090 Undertakings, in general.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,

Secretary.

FR Doc. 79-17248 Filed 6-1-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 79-160]

19 CFR Parts 4, 6, 10, 123, 162, 171, 172

Fines, Penalties, Forfeitures, and Liquidated Damages for Violations of the Customs and Navigation Laws, Amended

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

ACTION: Final rule.

SUMMARY: Public Law 95–410, the "Customs Procedural Reform and Simplification Act of 1978", made numerous changes to laws enforced by the Customs Service. Some of the changes relate to fines, penalties, and forfeitures incurred for violations of customs and navigation laws concerning:

1. The transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade;

2. Foreign repairs and equipment purchases by vessels and aircraft of the United States;

3. The lack of a manifest or a discrepancy in a manifest; and

4. The entry of merchandise by fraud or negligence.

Generally, the Act changed the penalties provided, added new procedural rules to be followed at the administrative level, and provided for more extensive judicial review. This document amends the Customs Regulations to establish new procedures to reflect these changes.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: Aspects of penalties assessed under 19 U.S.C. 1592: Edward T. Rosse, Commercial Fraud and Negligence Penalties Branch (202–566–8317). Aspects of other penalties: Kathryn C. Peterson, Miscellaneous Penalties Branch (202–566–5746)—U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95–410), approved October 3, 1978 (the "Act"), made numerous amendments to statutes administered by Customs which relate to fines, penalties, forfeitures, and liquidated damages for violations of customs and navigation laws. Specifically, the Act amended:

1. Section 27, Merchant Marine Act of 1920 (46 U.S.C. 883), relating to the transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade;

2. Section 466, Tariff Act of 1930 (19 U.S.C. 1466), relating to foreign repairs and equipment purchases by vessels of the United States (the statute is applicable to U.S.-registered aircraft in accordance with section 6.7(d), Customs Regulations, as authorized by 19 U.S.C. 1644 and 49 U.S.C. 1509(c));

3. Section 584, Tariff Act of 1930 (19 U.S.C. 1584), relating to lack of a manifest or a discrepancy in a manifest, and

4. Section 592, Tariff Act of 1930 (19 U.S.C. 1592), relating to entry of merchandise by fraud or negligence.

To reflect these changes, on November 16, 1978, Customs published a notice in the **Federal Register** (43 FR 53453), proposing amendments to Parts 4, 6, 10, 123, 162, and 171, Customs Regulations (19 CFR Parts 4, 6, 10, 123, 162, and 171). The proposed amendments provided procedures for assessing a monetary penalty as an alternative to forfeiture of merchandise for a violation of 46 U.S.C. 883. Procedures also were proposed for forfeiture of a monetary amount as an alternative to forfeiture of a vessel or aircraft for a violation of 19 U.S.C. 1466. Similarly, new maximum penalties and procedures were proposed for certain manifest violations under 19 U.S.C. 1584. Finally, new procedures were proposed for the imposition of a monetary penalty or, in limited circumstances, for the seizure of merchandise, for a violation

of 19 U.S.C. 1592. A detailed description of the provisions of the Act which amended the penalty provisions administered by Customs and the background and purpose of the proposed changes to the Customs Regulations are contained in the November 16, 1978, notice.

That notice invited interested persons to submit comments on the proposed amendments on or before December 18, 1978. Many comments were received. Consideration of these comments and further review of the Act have resulted in a number of changes to the proposed amendments.

Discussion of Major Comments

Penalties Under 46 USC 883 and 19 USC 1466 and 1584

1. One commenter urged revision of proposed § 162.72(a) to provide that seizure actions against vessels and aircraft under 19 U.S.C. 1466 and 1584 be limited to the same circumstances as seizures of merchandise under 19 U.S.C. 1592; i.e., insolvency, lack of jurisdiction, or if seizure is essential to protection of the revenue or to prevent the importation of prohibited or restricted merchandise. Another commenter requested that the regulations for the assessment of penalties for violations of 46 U.S.C. 883 and 19 U.S.C. 1466 set forth maximum penalty levels based on the culpability of the violator, similar to the manner in which maximum penalties are determined for violations of 19 U.S.C. 1592.

These suggestions are not being adopted at this time because although the Act contains new provisions for monetary penalties and procedures under 46 U.S.C. 883 and 19 U.S.C. 1466, it does not mandate that the standards for seizures and maximum penalties added to 19 U.S.C. 1592 be applied to violations of these statutes. However, the question of adding standards to the regulations applying to violations governed by these statutes will be considered by Customs in the future.

2. A commenter referred to Customs policy, stated in connection with proposed § 162.72(b), that a penalty would not be assessed against a carrier under 19 U.S.C. 1584 if the record clearly shows that the unmanifested or falsely manifested cargo was packaged in such a way that the carrier's employees were prevented from knowing its contents. The commenter urged that this principle, as well as the specific criteria and procedures for determining liability, be set forth in the regulations. The commenter also requested that the regulations state that this principle would be applied to manifest irregularities involving loose cargo so that a carrier would not be liable if the record showed that the discrepancy occurred after the cargo left the carrier's custody. The same commenter requested that § 162.72(b) set forth the criteria and procedures for determining liability for discrepancies on manifests as between various persons handling imported goods, such as the importing and domestic carriers, and also the types of records which would suffice for proof that the carrier was not responsible for the discrepancy in the manifest. The commenter argued that Customs should not issue a penalty claim under 19 U.S.C. 1466 or 1584 in any circumstances which would require retention of records by air cargo carriers for more than 2 years.

While Customs will consider in the future the feasibility and desirability of publishing some general criteria used in determining liability under this section, adoption of regulations delineating the specific circumstances and factual situations in which carriers may be liable for manifest violations is considered impracticable at this time. In questionable cases, the carrier may contact Customs directly for guidance in establishing procedures which comply with the manifest requirements.

It also is considered impracticable to provide by regulation that the keeping of certain records by carriers would preclude the assessment of a penalty under 19 U.S.C. 1584. Further, the suggestion that a limit of 2 years should apply to the retention of records by carriers would be inconsistent with the provisions of 19 U.S.C. 1621 under which an action may be commenced by the United States for a violation of 19 U.S.C. 1466 or 1584 at any time up to 5 years after the time the alleged offense was discovered. Accordingly, these suggestions have not been adopted.

3. One commenter noted that the penalty prescribed in proposed § 162.72(b)(3) for manifest violations (overages) applicable to aircraft arrivals under 19 U.S.C. 1584 appears to be an exception to the general penalty provisions for entry and clearance and Customs violations applicable to aircraft under 49 U.S.C. 1474. The latter statute is implemented by § 6.11, Customs Regulations (19 CFR 6.11).

As amended by Pub. L. 95–410, 19 U.S.C. 1584 provides for a penalty equal to the value of the merchandise, but not to exceed $10,000, in the case of a vessel manifest discrepancy resulting in an overage. Under 49 U.S.C. 1509 (b) and (c), the Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the administration of the Customs laws and the entry and clearance of vessels. Section 6.7, Customs Regulations (19 CFR 6.7), establishes manifest requirements applicable to aircraft and describes the procedures to be followed in the event of shortages, overages, or other manifest discrepancies. 49 U.S.C. 1474 provides that any person who violates any entry or clearance or Customs regulation prescribed under 49 U.S.C. 1509 (b) or (c) shall be subject to a penalty of $500.

Customs is of the opinion that 19 U.S.C. 1431(b) would permit the assessment of penalties under either 19 U.S.C. 1584 or 49 U.S.C. 1474. However, 49 U.S.C. 1474, in prescribing a penalty of $500 for *any* violation of vessel entry or clearance laws or regulations made applicable to civil aircraft, is used presently rather than the provision of 19 U.S.C. 1584. The Customs Service believes that this practice should be continued. Accordingly, the word "aircraft" is being deleted from proposed section 162.72(b)(3), and a new sentence is being added to that section to distinguish the penalties applicable to vessels and vehicles for a violation of 19 U.S.C. 1584, involving a manifest discrepancy resulting in an overage, from the $500 penalty applicable to a similar violation by aircraft.

In addition, § 6.7(h)(5), Customs Regulations (19 CFR 6.7(h)(5)), the subject of a proposed conforming amendment, is being amended further (1) to provide that any penalty assessed under 19 U.S.C. 1584 for a manifest discrepancy by an aircraft resulting in an overage shall be $500, and (2) to delete the sentence relating to the procedure for determining the value of merchandise seized for a violation of 19 U.S.C. 1584 which is not applicable to aircraft.

4. One commenter suggested that the prepenalty notice procedure under 19 U.S.C. 1584 applicable to violations occurring after October 3, 1978, the effective date of the Act, also should be applicable to any violation which occurred before October 3, 1978, if a proceeding was not initiated until after that date.

Customs does not believe that any useful purpose would be served by issuing retroactive prepenalty notices for violations of the statute occurring before October 3, 1978. Only the master, aircraft commander, or the vessel or aircraft owner, was liable for manifest violations occurring before that date. Accordingly, for these violations, one of the principal purposes of the new prepenalty procedure, i.e., to determine

the identity of the person actually responsible for the violation, would not apply.

5. Another commenter observed that in section 109(4) of the Act, Congress used specific language in defining "clerical error" for the purpose of exempting certain manifest violations under 19 U.S.C. 1584 from liability for penalties. The commenter contends that the definition of "clerical error" in proposed § 162.71(c) therefore is incorrect because it may be construed as limiting the kinds of descrepancies which Congress intended to exempt from liability.

The commenter's concern that the proposed regulatory definition will narrow the statutory definition of "clerical error" is unfounded. The language in the proposed regulation only clarifies the statutory definition and does not restrict it.

Penalties assessed under 19 U.S.C. 1592: Definitions

1. A commenter requested that proposed § 162.71 be expanded to include defintions of the terms "negligence", "gross negligence", and "intentional" as used in the statute and the proposed regulations.

Except for section 110(f)(1)(B) of the Act, and proposed § 162.70(b), Customs Regulations, which provide alternative effective dates for the provisions of the Act relating to "any alleged intentional violation" of 19 U.S.C. 1592 involving Japanese television receivers the subject of antidumping proceedings, the statute and the proposed regulations refer to "fraud" and "fraudulent violation" rather than "intentional violation". However, the terms "negligence", "gross negligence", "fraud", "fraudulent violation", and "intentional violation" are not defined in the Act. Accordingly, in proceedings under section 1592, these terms must be applied on a case-by-case basis, taking into account the facts and circumstances of each case, the purpose of the Act, and prior administrative and judicial interpretations. In these circumstances, it has been concluded that it would be impossible at this time for Customs to incorporate in the regulations definitions of these terms which could be relied upon by persons subject to the statute. The feasibility and desirability of doing this in the future will be considered.

2. A commenter suggested that the definition of "actual loss of duties" in proposed § 162.71 be expanded to provide that, for purposes of assessing any penalty, the actual loss of duties shall be reduced by the amount of any erroneous overpayment of duties by the alleged violator.

As stated in proposed § 162.71(a)(1), the term "actual loss of duties" refers to the duties which the Government is deprived of by a violation in respect of a liquidated entry. If, in fact, there has been an erroneous overpayment of duties on a liquidated entry, there would be no actual loss of duties for that entry. Customs does not believe, however, that the Act may be construed as contemplating any reduction in the actual loss of duties on an entry because the violator may have made an erroneous overpayment of duties on other entries. Accordingly, this suggestion has not been adopted.

3. One commenter asked clarification regarding whether the word "duties" in the term "loss of duties", as defined in proposed § 162.71, includes internal revenue taxes which attach upon importation.

The word "duties" as used in the Customs Regulations is defined in § 101.1(i) (19 CFR 101.1(i)) to mean "Customs duties and any internal revenue taxes which attach upon importation". Accordingly, the word "duties" used in the terms "loss of duties", "actual loss of duties", and "potential loss of duties", as defined in proposed § 162.71, includes internal revenue taxes which attach upon importation.

4. Another commenter urged amendment of the definition of the term "mistake of fact" in proposed § 162.71(d) to indicate that an erroneous belief, even though it has legal consequences, is a mistake of fact unless it is caused by the neglect of a legal duty.

This suggestion has not been adopted because a mistake of fact relates only to an erroneous factual belief, whereas the language proposed by the commenter could be construed to mean that an erroneous belief concerning the legal consequences of an act is a mistake of fact.

5. One commenter requested that a definition of the term "customs broker" be added to proposed § 162.71 and that proposed § 162.73 be revised to set forth guidelines governing the assessment of penalties against customs brokers under 19 U.S.C. 1592.

The term "customhouse broker" is defined in § 111.1(b), Customs Regulations (19 CFR 111.1(b)). Customs believes that it would be inappropriate as well as impracticable to set forth in the regulations information relating to the liability of a particular class of persons and firms under 19 U.S.C. 1592. Accordingly, these suggestions are not being adopted. Individual brokers and brokerage firms may obtain advice on any particular aspect of their operations by direct inquiry to Customs. As in other areas, Customs will consider the feasibility and desirability of publishing some guidelines in the future.

Seizures

1. Two commenters urged that proposed § 162.21(a), which states the general seizure authority of Customs officers, should be expanded to set forth specific circumstances under which seizures are authorized or, alternatively, the statutory provisions authorizing seizure should be enumerated. One commenter suggested that the restrictions on seizures enacted in 19 U.S.C. 1592(c)(5) should be set forth in proposed § 162.21(a).

Proposed § 162.21(a) authorizes seizure of property by Customs officers having a reasonable cause to believe that *any* law or regulation enforced by Customs has been violated. Because Customs enforces numerous laws and regulations, many on behalf of other agencies, it would be impracticable to set forth the specific circumstances under which seizures may be made or to enumerate all the various laws. In this regard, under § 162.31, Customs must provide information concerning the seizure, including the law violated, to any person from whom property is seized. Accordingly, these suggestions have not been adopted.

2. One commenter requested revision of proposed § 162.75(d)(1) to require that (i) district directors consider the degree of culpability and nature of the violation in determining the amount of security to be deposited to secure release of seized merchandise, and (ii) the security deposit be limited to an amount equal to the proposed monetary penalty.

Because of the necessity of investigating, verifying, and analyzing all pertinent information prior to any determination of the nature of the violation and culpability of the alleged violator in a seizure case, it would be impracticable to require that such a determination be made prior to release of the seized property. This suggestion, therefore, has not been adopted.

3. A commenter also requested that specific provisions be added to proposed § 162.75(d)(2) for release of seized merchandise to persons acquiring an interest in the merchandise subsequent to its seizure by Customs.

This section provides that the district director may release seized merchandise to "any other person" than the person from whom the merchandise was seized, if the district director is satisfied that the person has a substantial interest in

the merchandise and the person submits (i) an agreement to hold the United States and its officers and employees harmless, or (ii) a release from the person from whom the merchandise was seized. These provisions are considered to authorize the release of merchandise to a person who acquired an interest in the merchandise after seizure and, accordingly, Customs does not believe that more detailed procedures are required.

4. A commenter recommended the addition of a provision to proposed § 162.77(b)(1) to require that if a prepenalty notice is issued following a seizure, the notice shall include a statement of the grounds for the seizure, in addition to the classes of information required under the proposed regulations.

The provisions for a prepenalty notice in proposed § 162.77(b)(1) require that the person be furnished with information specified in 19 U.S.C. 1592(b)(1)(A) concerning the alleged violation and proposed penalty. Concerning the grounds for seizure, § 162.31, Customs Regulations (19 CFR 162.31), provides that following a seizure, the person from whom the property is seized shall be given a notice which sets forth all material information, including the grounds for the seizure. Accordingly, it is considered unnecessary that this information be repeated in the prepenalty notice.

Prior Disclosure

1. Proposed § 162.74(d) would require that any person making a prior disclosure of a violation must establish lack of knowledge of any existing formal investigation of the violation by Customs. A commenter requested that this section include a provision that Customs must supply to the person any information in its possession which would tend to establish that the person had knowledge of an investigation, and that the person then be afforded a reasonable opportunity to refute the information.

This request is considered to be inconsistent with 19 U.S.C. 1592(c)(4), which expressly provides that the person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. If Customs does not agree that a valid prior disclosure has been made and the issue is raised in petition for relief, the person of course will be provided with Customs findings of fact and conclusions of law concerning lack of knowledge. For these reasons, this suggestion has not been adopted.

2. Two commenters recommended that proposed § 162.74(g) be revised to increase the amount of loss of duties to the Government which would warrant investigation and a penalty for a violation which is subject to a prior disclosure. The commenters suggested that the amount be increased from $250 to $500.

This recommendation has been adopted. Proposed § 162.74(g) has been revised further to provide that if the violation involves a loss of duties of $500 or less, the district director shall not refer the matter for investigation or establish a penalty case unless there is evidence of fraud.

3. Commenters also requested that the time period provided in proposed §§ 162.76, 162.77, and 162.78, during which persons may make presentations in response to a prepenalty or penalty notice, should be 60 rather than 30 days. Further, it was contended that when a shorter time period is required because less than 1 year remains before the statute of limitations may be asserted as a defense (§ 162.78), the shorter period should not be less than 14 days, rather than 7 days, and the date on which any shorter period shall commence should be the date on which the notice was received by the person, rather than the date on which the notice was mailed by Customs.

Customs considers that the 30-day period for responding to the prepenalty notice is ample in most cases. If at least 1 year remains before the statute of limitations may be asserted as a defense, a district director may extend the time for preparation of a response for any of the reasons stated in § 162.32(a), such as the unavailability of evidence or testimony, or the complexity of legal or factual issues involved.

In cases where less than 1 year remains before the statute of limitations may be asserted, the 7-day period is a minimal time for response, and a district director may provide a longer period if the delay will not prejudice the Government's ability to enforce the claim.

Customs considers it essential to the enforcement of this provision that the period for response commence with the mailing of the notice. However, to improve this situation, § 162.78(a) has been revised to provide that if less than a 30-day period is allowed for response, the district director shall notify the person of the issuance and contents of the prepenalty notice by telephone, if possible.

Penalty Assessment Procedures

1. One commenter requested that proposed § 162.73 be revised to require that before issuing a prepenalty notice, the appropriate Customs officer examine the circumstances surrounding the alleged offense to determine whether the proposed claim should be in an amount less than the maximum penalty amount provided by 19 U.S.C. 1592.

This request has not been adopted because at the time a prepenalty notice must be issued, the district director ordinarily will not have received all of the information necessary to determine whether a claim should be assessed for less than the maximum amount. Of course, a person receiving a prepenalty notice will have an opportunity to present information concerning the amount of any penalty at the time he responds to the notice and before the penalty is assessed.

2. A commenter requested revision of proposed § 162.73(c) to specify that repetition of the same mistake of fact or clerical error, standing alone, would not be held to constitute a pattern of negligent conduct.

Customs considers that adoption of this suggestion would be inappropriate because repeated mistakes or errors do tend to indicate a lack of due care. Of course, the person would have the opportunity to show that the mistakes or errors occurred despite the use of due care.

3. A commenter requested revision of proposed §#162.79 to include a definition of what constitutes prompt notice by the district director of the determination whether a penalty is being assessed in a particular case. It also was requested that any penalty notice state the reasons why arguments in response to the prepenalty notice were not accepted.

Differences in the complexity of penalty cases make it impracticable for the district director to issue a penalty notice in each case within a specified period. Under proposed § 162.79, the district director is required to issue a penalty notice "promptly", given the circumstances of each case. Any written response by the district director to the arguments made in response to the prepenalty notice would be premature in view of the requirement that the person to whom the penalty notice is issued may file a petition for relief and must be provided a written decision on the petition. Accordingly, these suggestions have not been adopted.

4. A commenter suggested that the provisions in proposed § 162.79b for recovery of any actual loss of duties

(withheld duties) should be expanded to set forth more specifically the procedures for deposit of withheld duties.

These provisions implement new 19 U.S.C. 1592(d). Section 1592(d) provides that notwithstanding section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties as a result of a violation of section 1592(a), the appropriate Customs officer shall require that duties be restored, whether or not a monetary penalty is assessed. To state more specifically the procedures for collection of withheld duties under § 162.79b, a provision has been added to § 162.79(b)(2) for payment of withheld duties by a person to whom a penalty notice has been issued. The provision requires that the person deposit or arrange for payment of withheld duties within 30 days of the date of the penalty notice. Similarly, § 162.79b has been revised to provide that if payment of withheld duties is being required from a person to whom a penalty notice is not issued, the district director shall issue a notice of withheld duties to the person concerned. The notice shall contain generally the information which would be included in a penalty notice. The person will be required to deposit or arrange for payment of the withheld duties within 30 days of the date of the mailing of the notice. Any determination by a district director to require a deposit of withheld duties will be subject to review by Customs Headquarters.

Petitions for Relief

1. Commenters urged that decisions of the district director on petitions for relief under § 171.21 should be made subject to review by the regional commissioner or by Customs Headquarters, prior to issuance. As an alternative, it was suggested that the maximum claim which the district director is authorized to mitigate or remit in response to a petition for relief be reduced from $25,000 to $10,000.

These suggestions have not been adopted because they are inconsistent with Customs policy to delegate authority to the level at which it can be most effectively exercised. To limit the authority of field officers to act on petitions for relief as suggested would hamper Customs efforts to promote the prompt disposition of penalties cases.

Existing procedures for review of initial and supplemental petitions for relief contained in Subparts C and D of Part 171, Customs Regulations, provide adequate means for review of initial determinations by district directors on petitions for relief from penalty claims. The administrative processing of penalty assessments and decisions on petitions for relief under 19 U.S.C. 1592 will be monitored carefully by Customs Headquarters to ensure that the assessments and decisions are uniform and reached in a timely manner.

2. A commenter requested that proposed § 171.31 be expanded to indicate the procedure for the dissemination to the general importing public of Customs decisions on petitions for relief.

Decisions on initial and supplemental petitions considered to be precedential in nature or otherwise significant will be published in the weekly *Customs Bulletin* with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. This provision has been added to § 171.31.

Additional Changes

As a result of a further review by Customs of existing and proposed procedures in the areas of fines, penalties, forfeitures, and liquidated damages, the following amendments to the Customs Regulations, although not referred to in the November 16, 1978, notice of proposed rulemaking, have been found to be necessary to implement Pub. L. 95–410:

1. Pub. L. 95–410 amended 19 U.S.C. 1621 to provide that in cases of alleged violations of 19 U.S.C. 1592 arising out of gross negligence or negligence, the statute of limitations may be asserted as a defense in any action brought by the Government more than 5 years after the date the alleged violation was *committed*. Formerly, the statute of limitations could be asserted as a defense in those cases only if the action was brought more than 5 years after the date of *discovery* by Customs of the alleged violation. In view of this new provision, § 162.32(a), Customs Regulations, has been amended to provide that if a penalty is assessed alleging a violation of 19 U.S.C. 1592, and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period shorter than 60 days, but not less than 7 days, for filing a petition for relief.

2. Under 19 U.S.C. 1613, a person claiming an interest in property which has been forfeited and sold for a violation of the customs laws may apply to the Secretary of the Treasury for remission of the forfeiture and restoration of the proceeds of sale. The application must demonstrate a lack of awareness by the person of the forfeiture proceeding and that the forfeiture was incurred without willful negligence or intent to defraud. The statute sets forth the costs to be deducted in determining the net proceeds available to the person. Provisions for the distribution of restored proceeds to successful applicants currently are set forth in section 162.51, Customs Regulations.

The Act further amended section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), by redesignating its present provisions as section 613(a) and by adding a new section 613(b). This new section provides that if the proceeds of sale of merchandise forfeited under 19 U.S.C. 1592 exceed the sum of (i) the monetary penalty finally assessed and (ii) the expenses incurred in forfeiture and sale as referred to in section 613(a), the excess proceeds shall be refunded to the person against whom the penalty was assessed. Accordingly, Part 162, Customs Regulations, has been amended by adding a new § 162.52 to provide for the refund of any excess proceeds from the sale of merchandise seized and forfeited under 19 U.S.C. 1592. Section 162.52 also includes a listing of the order in which expenses and charges related to forfeiture and sale for violations of 19 U.S.C. 1592 shall be paid out of the proceeds of sale. Similarly, § 162.51 has been amended to provide that expenses and charges shall be paid out of the proceeds of sale in the same order as set out in § 162.52 before refunds can be made.

3. Section 6.11 is amended to make clear that as an alternative to seizure and forfeiture of the aircraft, the owner of any aircraft in violation of section 466, Tariff Act of 1930, as amended (see § 6.7(d)), shall be liable for seizure and forfeiture of a monetary amount up to the value of the aircraft in addition to the civil penalty of $500 provided by § 6.11 for any violation of a Customs requirement prescribed in 19 CFR Part 6.

4. Section 162.31, Customs Regulations, provides that written notice of any fine, penalty, or liability to forfeiture incurred under the laws administered by Customs shall be given to each person the facts of record indicate has an interest in the claim or seized property. The notice must inform each interested person of the provisions concerning the filing of petitions for relief from the claim or forfeiture in Part 171.

In a recent decision, the Ninth Circuit Court of Appeals stated that the filing of a petition for relief from a forfeiture does not of itself excuse the Government from its obligation to commence prompt judicial proceedings,

although the parties may agree that judicial action shall be postponed until the conclusion of the administrative action on the petition for relief (*Ivers* v. *United States*, 581 F.2d. 1362 (9th Cir. 1978)). In view of this decision, § 162.31(a) is amended to provide notice that petitioners must file an express agreement to defer judicial or administrative forfeiture action pending resolution of the administrative consideration of the petition. In the absence of such an agreement, cases involving seizures will be referred immediately to the United States attorney for the commencement of forfeiture proceedings or the seized property will be forfeited summarily in accordance with the provisions of Subpart E, Part 162 of this chapter. Reference to this procedural requirement also is being added to § 171.11(d).

5. Section 162.41(c)(1), Customs Regulations, provides that a Customs entry which is the subject of an investigation or penalty action under 19 U.S.C. 1592 may be liquidated by the district director prior to the conclusion of the investigation or final disposition of the forfeiture proceedings or claim for forfeiture value if the district director determines that liquidation would be in the best interest of the Government.

Pub. L. 95–410 added a new section 504 to the Tariff Act of 1930, as amended (19 U.S.C. 1504), to provide that an entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer, consignee, or his agent at the time of entry. The period for liquidation may be extended or suspended, however, upon notice to the importer, consignee or his agent, and surety if (1) information needed for the proper appraisement or classification of the merchandise is not available to Customs, or (2) the importer, consignee, or his agent requests an extension and shows good cause therefor, or (3) liquidation is suspended as required by statute or court order. Any entry not liquidated after 4 years shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry unless liquidation continues to be suspended by statute or court order, in which event the entry shall be liquidated within 90 days after removal of the suspension.

Accordingly, § 162.41(c) is being amended by redesignating paragraph (c)(1) as (c)(1)(i) and by adding a new paragraph (c)(1)(ii) to refer to the provisions of new section 504 of the tariff act. A provision has been added to redesignated paragraph (c)(1)(i) to provide that the district director's discretionary authority to liquidate during the pendency of a penalty proceeding shall be subject to the provisions of new paragraph (c)(1)(ii).

In addition, "penalty action" has been substituted for "forfeiture proceedings or claim for forfeiture value" in redesignated paragraph (c)(1)(i). Also, a period has been placed after "merchandise" and "in addition to the seizure of the merchandise or demand for forfeiture value." has been deleted in paragraph (c)(2). These revisions reflect the amendment of 19 U.S.C. 1592 by Pub. L. 95–410 to provide for imposing a monetary penalty in addition to forfeiture and in lieu of a claim for forfeiture value and restricting the circumstances under which seizure and forfeiture may take place for violations of 19 U.S.C. 1592.

Editorial Changes

1. The words "at the time of discovery of the violation" have been deleted from proposed § 162.71(a) (1) and (2), because an actual loss of revenue may result after discovery of a violation. In many cases, the violation involves numerous entries at various ports, and liquidation often becomes final through inadvertence or otherwise after discovery of the violation.

2. The word "actual" has been inserted before "loss" where the term "loss of duties" is used in proposed § 162.74(a) and in the heading and the first sentence of proposed § 162.74(e) to clarify that the required tender of duties applies only to the actual loss of duties.

3. The language after "in the discretion of" in proposed § 171.14(b), has been deleted and the following is substituted:

"* * * any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition".

This change has been made because various officials within Customs and the Treasury Department other than those specifically enumerated in the proposed section are authorized to act on petitions and supplemental petitions.

4. A reference to a claim for a "monetary amount" is being added in §§ 162.72 and 162.76 to reflect the alternative to forfeiture of the vessel provided for in section 466, Tariff Act of 1930, as amended by the Act (applied to aircraft by § 6.7(d), Customs Regulations). A conforming change is being made in proposed § 4.80(b)(1).

5. The words "together with a copy of 19 U.S.C. 1584" are deleted from § 162.65(c) to reflect the current practice of Customs to refer to the law violated in the seizure notice rather than to attach a separate copy of the statute itself.

6. Reference to collection action required by the Federal Claims Collection Act of 1966 (31 U.S.C. 951–953) in respect of a penalty or claim for monetary penalty prior to referral of the matter to the United States attorney is being added to §§ 162.32(a), 162.41(b), 162.65(d), 171.32, 172.2(a), and 172.32.

After consideration of all comments received and further review of the proposed amendments, it has been determined that the amendments should be adopted as proposed, except for the changes described.

Inapplicability of Executive Order 12044

This document is not subject to the provisions of the Treasury Department directive (43 FR 52120) implementing E.O. 12044, "Improving Government Regulations", because the document was in the process of preparation before May 22, 1978.

Drafting Information

The principal author of this document was Edward T. Rosse, Regulations and Legal Publications Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendments to the Regulations

Parts 4, 6, 10, 123, 162, 171 and 172, Customs Regulations (19 CFR Parts 4, 6, 10, 123, 162, 171 and 172), are amended as set forth below.

R. E. Chasen,

Commissioner of Customs.

Approved: May 23, 1979.

Richard J. Davis,

Assistant Secretary of the Treasury.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Footnote 23 to § 4.12 is amended to read as follows:

§ 4.12 Explanation of manifest discrepancy.

* * * * *

[23] "* * * if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided*, That if the appropriate Customs officer shall be satisfied that the manifest * * * is incorrect

by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master said penalties shall not be incurred. * * *. The term 'clerical error' means a non-negligent, inadvertent or typographical mistake in the preparation, assembly, or submission of the manifest. * * *"

(Sec. 584, Tariff Act of 1930, as amended; 19 U.S.C. 1584)

2. The second sentence of § 4.12(a)(5) is amended to read as follows:

(a) * * *

(5) * * * For purposes of this section the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. * * *

3. Section 4.80 is amended by redesignating present paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively, and by inserting a new paragraph (b) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the district director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $200 for each passenger so transported and landed (46 U.S.C. 289).

(R.S. 251, as amended, sections 466, 584, 624, 46 Stat. 718, 748, 759 (19 U.S.C. 66, 1466, 1584, 1624) section 27, 41 Stat. 999, as amended (46 U.S.C. 883), and section 1109, 72 Stat. 799, as amended (49 U.S.C. 1509))

PART 6—AIR COMMERCE REGULATIONS

Section 6.7(h)(5) is amended to read as follows:

§ 6.7 Documents for entry.

* * * * *

(h) * * *

(5) Unless the required notification and explanation are made timely and the district director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the aircraft commander or agent, that there was a valid reason for the failure to so report), applicable penalties under section 584, Tariff Act of 1930, as amended, shall be assessed, except that any penalty involving a manifest discrepancy resulting in an overage shall be $500 (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. The fact that the aircraft commander or owner had no knowledge or a discrepancy shall not relieve him from the penalty.

2. Section 6.11 is amended to read as follows:

§ 6.11 Penalties and forfeitures.

Any person violating any Customs requirement prescribed in this part, or any provision of the Customs laws or regulations made applicable to aircraft by § 6.10, shall be subject to a civil penalty of $500, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the customs laws. As an alternative to seizure and forfeiture of the aircraft, the owner of any aircraft in violation of section 466, Tariff Act of 1930, as amended (see § 6.7(d)), shall be liable for seizure and forfeiture of a monetary amount up to the value of the aircraft in addition to the civil penalty of $500. The penalty and forfeitures may be remitted or mitigated in accordance with the provisions of Part 171 of this chapter.

(R.S. 251, as amended, 624, 46 Stat. 759, 92 Stat. 901 (19 U.S.C. 66, 1466, 1624); sections 904, 1109, 72 Stat. 787, 799, as amended (49 U.S.C. 1474, 1509))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

The last sentence of § 10.41(d) is amended to read as follows:

§ 10.41 Instruments, exceptions.

* * * * *

(d) * * * The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(R.S. 251, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1592, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Section 123.12(c) is amended to read as follows:

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

* * * * *

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

2. Section 123.14(d) is amended to read as follows:

§ 123.14 Entry of foreign-based trucks, buses, and taxicabs in international traffic.

* * * * *

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(R.S. 251, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1592, 1624))

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. Section 162.21(a) is amended to read as follows:

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

§ 162.31 [Amended]

2. Section 162.31(a) is amended by adding the following at the end thereof:

(a) * * * The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney for

institution of judicial proceedings, or summary forfeiture proceedings will be begun.

* * * * *

3. Section 162.32(a) is amended by revising the first sentence and by adding a new sentence between the first and second sentences to read as follows:

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties, and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief under Part 171 of this chapter, or fails to pay or to arrange to pay the fine or penalty within 60 days from the mailing date of the violation notice provided in § 162.31 (unless additional time is authorized for filing a petition, as specified below), the district director, after required collection action, if appropriate, shall refer the case promptly to the U.S. attorney unless the Commissioner of Customs expressly authorizes other action. If a penalty is assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period of time shorter than 60 days, but not less than 7 days, for the filing of a petition for relief. * * *

§ 162.32 [Amended]

4. Section 162.32(b) is amended to read as follows:

* * * * *

(b) *Appraised value of seized property exceeds $10,000.* If the appraised value of seized property exceeds $10,000 and neither a petition for relief in accordance with Part 171 of this chapter, nor an offer to pay the domestic value as provided for in § 162.44, is made within 60 days (unless additional time has been authorized under § 162.32(a)), the district director shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made.

5. Paragraph (b) and (c) of § 162.41 is amended to read as follows:

* * * * *

(b) *Claim for domestic value unpaid.* If a claim for domestic value made by the district director is not paid or settled as prescribed in this part or in Part 171 of this chapter, the district director, after required collection action, shall refer the case promptly to the U.S. attorney.

(c) *Liability for duties; liquidation of entries.* (1)(i) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (c)(1)(ii) of this section, may liquidate the entry and collect duties before the conclusion of the investigation of final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(ii)(A) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(*1*) Information needed by Customs for the proper appraisement or classification of the merchandise is not available,

(*2*) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extension should be granted, or

(*3*) The 1-year liquidation period is suspended as required by statute or court order.

(B) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(C) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(2) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(3) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

6. The first sentence of § 162.43(b) is amended to read as follows:

§ 162.43 Appraisement.

* * * * *

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. * * *

7. Section 162.51 is amended to read as follows:

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) *Order of payment of expenses incurred.* (1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), § 171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, or if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor, except that expenses incurred for Government labor and storage on Government-owned or leased property shall not be included. When the proceeds are insufficient to pay expenses of cartage, storage, and labor fully, they shall be paid pro rata.

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery.

8. Part 162 is amended by adding a new § 162.52 to read as follows:

§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides for the disposition of the proceeds from the sale of property seized and forfeited under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in § 162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the district director shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the district director shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property.* If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a "sale" for the purposes of section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b).

9. The first sentence of § 162.65(c) is amended to read as follows:

162.65 Penalties for failure to manifest narcotic drugs or marihuana.

* * * * * *

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle and to the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible. * * *

10. Section 162.65(d) is amended to read as follows:

* * * * * *

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended, is not paid, or a petition is not filed as provided in Part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the district director, after required collection action, shall refer the case to the U.S. attorney.

11. Part 162 is amended by adding a new Subpart G to read as follows:

Subpart G—Special Procedures for Certain Violations

Sec.

162.70 Applicability.
162.71 Definitions.
162.72 Penalties under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.
162.73 Penalties under section 592, Tariff Act of 1930, as amended.
162.74 Prior disclosure.
162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.
162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.
162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.
162.78 Presentations responding to prepenalty notice.
162.79 Determination as to violation.
162.79a Other notice.
162.79b Recovery of actual loss of duties.

Subpart G—Special Procedures for Certain Violations

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (o) of this section, violations of section 922, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which preceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation—

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings (see § 153.46 of this chapter),

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of Subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties.* "Loss of duties" means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* "Actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of

entries on which liquidation had become final.

(2) *Potential loss of duties.* "Potential loss of duties" means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Noncommercial importation.* "Noncommercial importation" means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(c) *Clerical error.* "Clerical error" means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(d) *Mistake of fact.* "Mistake of fact" means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the district director has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $500 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $500 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $500 (see § 6.11, Customs Regulations) if merchandise is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage").

(iii) Unmanifested merchandise beonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 6.7(h)(5) of this chapter.

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in section 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, or

(ii) If there is no loss of duties, 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations, (i) The lesser of the domestic value of the merchandise or two times the loss of duties, or

(ii) If there is no loss of duties, 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations, (i) One times the loss of duties, or

(ii) If there is no loss of duties, 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

§ 162.74 Prior disclosure.

(a) *In general.* A prior disclosure is made if the person concerned discloses the circumstances of a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (e) of this section. If a prior disclosure is made, the maximum penalties shall be as set forth in § 162.73(b).

(b) *Referral for investigation.* Any disclosure of a violation shall be referred immediately by the district director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office immediately shall return the disclosure, together with its report, to the district director for appropriate action.

(c) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosure party and the disclosed information of 19 U.S.C. 1592, on the date the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification or other technical investigation, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information:

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded on the Memorandum of Information Received, Customs Form 4621, by the Office of

Investigations as the date on which the information was received;

(4) In the case of an ongoing investigation of a possible violation of 19 U.S.C. 1592 not involving the disclosing party and the information disclosed, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(5) In the case of a general ongoing investigation of a specific class of goods or industry, on the date recorded by the Office of Investigations as the date on which it determined to direct its investigation specifically to the disclosing party and the disclosed information; and

(6) In all other cases, on the date recorded in a Report of Investigation, Customs Form 23, as the date on which an investigator was assigned to investigate possible violations of 19 U.S.C. 1592 by the disclosing party with respect to the disclosed information.

(d) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge.

(e) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure, or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(f) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(g) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if:

(1) The disclosed violation involves a loss of duties of $500 or less,

(2) Any actual loss of duties has been deposited,

(3) There is no evidence that the violation was fraudulent, and

(4) There are no other compelling reasons for a penalty proceeding, such as a history of similar violations.

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the district director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the district director shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise—*(1) *To person from whom seized.* The district director shall return seized mechandise to the person from whom seized upon the deposit of security, in a form acceptable to the district director, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The district director may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the district director, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The district director is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with Part 171 of this chapter, nor the monetary penalty paid within the time provided by law, the district director immediately shall:

(1) Report the facts to the U.S. attorney for the judicial district in which the seizure was made, if the appraised value of the seized merchandise exceeds $10,000 or

(2) Proceed under the summary forfeiture provisions of Subpart E of this part, if the appraised value does not exceed $10,000.

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents—*(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $500 or less.

§ 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents—*(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulatons allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occured as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

§ 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The district director may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the district director, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the district director, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in § 162.32(a) relating to extensions of time for filing petitions for relief. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the district director, in his discretion, may allow further presentations.

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under § 162.79b, the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1) or § 162.77(b)(1), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter.

§ 162.79b Recovery of actual loss of duties.

Whether or not a monetary penalty is assessed under this subpart, the district director shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties in any case in which a monetary penalty is not assessed or a written notice of claim of monetary penalty is not issued, the district director shall issue a written notice to the person of the liability for the actual loss of duties. The notice shall identify the merchandise and entries involved, state the loss of duties and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days from the date of the notice. Any determination of actual loss of duties under this section is subject to review upon written application to the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66) sections 466, 584 592, 613, 618, 46 Stat. 718, 748, 750, as amended 757, as amended, 759 (19 U.S.C. 1466, 1584, 1592, 1613, 1618))

PART 171—FINES, PENALTIES, AND FORFEITURES

1. Section 171.1 is amended by adding a new paragraph (c) to read as follows:

§ 171.1 Special procedures for certain liabilities incurred under section 592, Tariff Act of 1930, as amended.

* * * * *

(c) *Exceptions.* The provisions of this section do not apply to violations referred to in § 162.70(a)(2) of this chapter.

§ 171.11 [Amended].

2. Section 171.11(d) is amended by adding a new sentence at the end thereof to read as follows:

* * * * *

* * * The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the United States attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

* * * * *

3. Part 171 is amended by adding a new § 171.14 to read as follows:

§ 171.14 Oral presentations seeking relief.

(a) *For certain violations.*—(1) *Right to make oral presentation.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under § 171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discertion of the district director, regional commissioner, or Commissioner whenever a petition or supplemental petition is under his consideration.

4. § 171.22(a) is amended to read as follows:

§ 171.22 Special cases acted upon by district director.

(a) *Merchandise illegally transported coastwise.* A forfeiture of merchandise or a claim for forfeiture of a monetary amount under title 46, United States Code, section 883, for illegally transporting merchandise coastwise, may be remitted by the district director, regardless of the value of the merchandise or the amount of the penalty, if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

5. Part 171 is amended by adding a new section 171.31a to read as follows:

§ 171.31a Written decision.

If a petition or supplemental petition (see section 171.33) for relief relates to a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based. Decisions on initial or supplemental petitions which are considered to be precedential in nature or otherwise significant will be published in the weekly CUSTOMS BULLETIN with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. For purposes of this section, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

§ 171.32 [Amended]

6. Section 171.32 is amended by revising the second sentence thereof to read as follows:

* * * If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full penalty or claim of forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66), section 592, 46 Stat. 570, as amended (19 U.S.C. 1592), section 27, 41 Stat. 99, as amended (46 U.S.C. 883))

PART 172—LIQUIDATED DAMAGES

1. Section 172.2 is amended to read as follows:

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to United States attorney.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 60 days from the date of mailing of the notice of the liquidated damages incurred, as provided in section 172.1, or within such additional time as may have been granted, the district director of Customs, after required collection action, shall refer the claim promptly to the United States attorney.

§ 172.32 [Amended]

2. Section 172.32 is being amended by revising the second sentence thereof to read as follows:

* * * If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall be referred promptly to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66), sections 623, 624, 46 Stat. 759, as amended (19 U.S.C. 1623, 1624))

[FR Doc. 79-17245 Filed 6-1-79; 8:45 am]

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[T.D. 79-159]

19 CFR Parts 10, 11, 18, 19, 54, 111, 112, 133, 134, 148, 151, 162

Recordkeeping, reporting by customhouse brokers, trademarks, and the disposition of forfeited distilled spirits, wines, and malt liquor, amended

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

ACTION: Final rule.

SUMMARY: Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978" ("the Act"), made numerous changes to the Tariff Act of 1930. One significant change was to require that records of the type normally kept in the ordinary course of business be made pertaining to the importation of merchandise and furnished to Customs, upon request, for examination and inspection. The Act also required licensed customhouse brokers to file a status report with Customs on specified dates. In addition, the Act modified the procedures relating to the importation, seizure, and disposal of articles having a U.S.-registered trademark, and the disposal of imported liquor forfeited to the Government.

This document amends various parts of the Customs Regulations to reflect these changes and to specify how long certain records must be retained by the public for possible Customs examination and inspection.

The regulations also are being amended to reflect the administrative practice of granting, for good cause, an extension of time in which an importer may comply with the country of origin marking requirements for imported merchandise or redeliver to Customs improperly marked merchandise.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: The following individuals at the U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229:

Allard D'Heur, Inspection and Control Division (202-566-5354) (Amendments to sections 10.62, 18.7, 112.29, Customs Regulations); Marcus Sircus, Regulatory Audit Division (202-566-2812) (Amendments to sections 10.24, 10.90, 19.16, 54.6, 148.90, 151.44, Customs Regulations); Bob Gray, Duty Assessment Division (202-566-5307) (Amendment to section 54.6,

Customs Regulations); John E. Elkins, Regulations and Legal Publications Division, (202-566-8237) (Amendments to remaining sections of Customs Regulations).

SUPPLEMENTARY INFORMATION:

Background

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978" ("the Act"), was approved on October 3, 1978.

Two of the major objectives of the Act are:

1. To permit the establishment of more efficient and flexible procedures for handling the documentary and financial aspects of import transactions while insuring complicance with Customs laws and the collection of accurate import statistics, and

2. To modify Customs procedures to expedite the processing of goods and individuals while reducing administrative costs for the Government.

To carry out these objectives, numerous provisions of the Tariff Act of 1930 (the "Tariff Act") were amended. These amendments necessitated many changes to the Customs Regulations.

Accordingly, on Novermber 16, 1978, Customs published a notice in the **Federal Register** (43 FR 53461) of a proposal to amend its regulations to implement the recordkeeping requirements, reporting requirements of customhouse brokers, the importation, seizure, and disposal of articles having a U.S.-registered trademark, and the disposal of imported liquor forfeited to the Government. Additional provisions of the Act which required amendments to the Customs Regulations are the subject of other documents published in the **Federal Register**.

Many comments were received in response to the notice published on November 16, 1978. The majority of the comments related to the proposed recordkeeping requirements to be included in Part 162, Customs Regulations. A few comments were made on the proposed trademark provisions of Part 133. The remaining comments related to the proposed reporting requirements for customhouse brokers in Part 111. As explained below, these comments have resulted in numerous changes to the proposed amendments.

Discussion of Major Comments

I. Recordkeeping, Inspection, Search and Seizure

1. One commenter stated that all of the purposes for which an investigation or inquiry may be conducted should be set forth in the scope paragraph of Part 162, Customs Regulations, as they are set forth in section 509(a) of the Tariff Act (19 U.S.C. 1509(a)). Section 509(a) provides that an investigation or inquiry may be conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duties and taxes due or which may be due, for determining liability for fines and penalties, or for insuring compliance with the laws administered by Customs. Proposed § 162.0, the scope paragraph, mentions only the last purpose.

Customs was of the opinion that the phrase "possible violations of the laws and regulations administered by Customs" was broad enough to cover the other three purposes. However, to eliminate any potential problems, § 162.0 has been redrafted to conform to the statutory language by including all the purposes for conducting an investigation or inquiry.

This same commenter objected to the use of the words "routine audit" in the scope paragraph in conjunction with the words "inquiry" or "investigation", because the statute mentions only investigation or inquiry.

Customs believes that the legislative history makes it quite clear that an audit is a type of inquiry which is within the scope of permissible activity. Accordingly, the word "audit" has not been deleted. However, because the audit may or may not be of a routine nature, the word "routine" has been deleted. Proposed § 162.0 has been redrafted to reflect these changes.

2. Two commenters pointed out that the language of proposed section 162.1 was too narrow. Under section 509(a)(2) of the Tariff Act, records required to be kept under section 508 of the Tariff Act may be summoned. However, "records" as used elsewhere in section 509 is not limited to records required to be kept under section 508. For example, records relating to any law or regulation administered by Customs may be examined under section 509(a)(1) to insure compliance with those laws or regulatons. Accordingly, the definition of "records" in § 162.1a(a) has been modified to broaden the language. Section 162.1d has been modified for the same reason.

Other commenters noted that section 508 of the Tariff Act, when indicating that certain persons shall make and render records for examination, includes not only records which pertain to an importation, but also "information contained in the documents required by the Tariff Act in connection with the entry of merchandise". Because Customs agrees that the scope of proposed § 162.1a(a)(1)(i) is too narrow, the language has been revised to broaden its coverage to include records which pertain to any importation or to the information contained in the documents required to be kept.

Another commenter objected to the use of the words "technical data" and "correspondence" in the definition of "records". Customs is of the opinion that correspondence and technical data are "documents" and "papers" which it has a right to examine for the purposes set forth in the Tariff Act. The phrase "technical data" is used in the Tariff Act, and the definition adopted for "technical data" in proposed § 162.1a(a) is taken from the House Report 95-621, p. 8.

Several commenters objected to the use of the word "forefeitures" in proposed § 162.1a(a)(1)(iii)(D). The word also appears in proposed § 162.1d(a)(1). The commenters contended that because there is no authority under the Tariff Act to require the making or keeping of records which relate to liability for forfeitures, the word "forfeitures" should be deleted.

Customs is of the opinion that there is authority under the Tariff Act to examine records to determine liability for fines and penalties, and that the words "fines and penalties" are used in the Act in a broad sense to describe the various sanctions available to Customs, including liability for "forfeitures". Accordingly, even though the Act refers only to fines and penalties, Customs does not believe the proposed language should be changed.

Three commenters stated the reference in proposed § 162.1a(a)(iii)(E) to records which "insure compliance" is confusing. The commenters indicated that if it is the intention of the section to describe records which permit Customs to determine whether the importer has complied with the laws and regulations, the section should be redrafted. Customs agrees with the commenters, and the section has been redrafted as suggested.

Based upon Customs review, the definition of "summons" in proposed § 162.1a(c) has been redrafted to indicate that a summons may require the production of records, the giving of testimony, or both. Because testimony need not relate to records, this section has been modified to delete this qualification.

3. One commenter believed that proposed § 162.1b should state that the existence of records is subject to verification and set out the sanctions

available for refusal or failure to keep records.

Customs believes it is implicit in the Act and proposed regulations that verification of the existence of records may take place. For example, the third party recordkeeper provisions specify that section 509 does not apply to any summons to determine whether or not records of the import transactions of an identified person have been made or kept. The manner in which verification may be accomplished is to issue a summons for the purpose of "insuring compliance with the laws and regulations administered by Customs" (i.e., recordkeeping requirements). Upon failure to comply, an action may be initiated by Customs in the U.S. District Court to enforce the summons. If the person thereafter fails to produce records, that person may be held in contempt of court, and further importation of that person's merchandise, directly or indirectly, or the importation of merchandise for that person's account, may be prohibited.

The same commenter also objected to the example used to illustrate that a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported and is not required to make or keep records unless "the terms and conditions of importation are controlled by the person placing the order." The point was made that knowledge and control are the important factors, as opposed to legal relationship. While this is true, the example utilized has all three factors (i.e. knowledge, control, and legal relationship) and fairly illustrates the point and, therefore, is being retained.

4. Several commenters noted that proposed § 162.1d makes no mention of the summoned person's right to legal counsel under 5 U.S.C. 555(b).

Customs does not believe that the statutory right to counsel is a matter which should be the subject of its regulations.

5. Several commenters inquired as to what is "reasonable notice" under proposed § 162.1d(a) and (b), which provide for examination of records and issuance of summonses. These examinations are to be undertaken only after providing the person with "reasonable notice." The commenters noted that House Report 95–621, pp. 10–11, indicated that reasonable notice was expected to mean action carried out at the mutual convenience of the parties, during normal business hours. The commenters are of the opinion that this expectation should be incorporated into the regulations.

Customs agrees that the examination or appearance under the summons should be during normal business hours. However, because no time may be convenient for certain persons, proposed § 162.1d(a) and (b) have been revised to indicate that an examination or appearance shall be during normal business hours, and to the extent possible, at a time mutually convenient to the parties.

6. One commenter contended that the use of the qualifying phrase "with the consent of" in proposed § 162.1d(a) was inconsistent with the language of section 509 of the Tariff Act.

Customs agrees, and the phrase has been deleted. This same commenter noted that the individuals listed in proposed §§ 162.1d(a) and 162.1e(a) are not the same as those listed in the statute. While Customs believes those individuals listed in the proposed regulations would encompass all of the individuals listed in the statute, it concluded upon reviewing the section that any enumeration of individuals is unnecessary. Therefore, the listing has been deleted from the proposed regulations. The same comment also was made with respect to proposed § 162.1d(b). That section has been modified to follow the statutory language.

7. Several commenters stated that testimony taken under oath should be transcribed, and a copy should be made available to the witness. Customs agrees and has modified proposed § 162.1d(c) to indicate that when testimony is taken under oath, it shall be transcribed, and a copy shall be made available on request to the witness, unless for good cause shown under 5 U.S.C. 555(c), the issuing officer determines that a copy should not be provided. In that event the witness shall be limited to inspection of the official transcript of the testimony.

For purposes of proposed § 162.1d(c), Customs considers a transcript to include a record of the testimony by electronic means. That section has been modified to indicate that such testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of a Customs officer.

8. Another commenter recommended that proposed § 162.1d(b) be modified to indicate that the summons may require either the production of records, the giving of testimony, or both. Customs agrees, and the appropriate modifications have been made.

9. Two commenters recommended that the telephone number of the issuing officer be included in the summons. Customs agrees that this information is important in arranging an examination or appearance, and § 162.1e(a)(4) has been modified accordingly. Similarly, § 162.1e(a)(1) has been amended to include the telephone number of the Customs officer before whom the appearance shall take place.

10. Based upon an internal review, Customs has determined that proposed § 162.1f(a) should be modified to indicate that any Customs officer is authorized to serve a summons. However, only the Commissioner or his designee may issue a summons under § 162.1d(b). Those individuals designated to issue a summons are listed in Customs Delegation Order No. 55 (T.D. 79–10), published in the **Federal Register** on January 10, 1979 (44 FR 2217), and any amendments.

11. Several commenters contended that the 5-day notice of summons required to be given to a person identified in the description of the records contained in the summons in proposed § 162.1g(b) is too short. The commenters cited 26 U.S.C. 7609(a)(2), which places a 14-day time limitation upon the Internal Revenue Service.

Customs agrees that 5 business days is not adequate and has increased the time to 10 business days. This will provide a minimum period of from 14 to 16 calendar days, depending upon the number of intervening weekends and Federal holidays.

One of these commenters stated that the notice should be issued at the same time service is made. Customs believes that because a minimum of 10 business days is provided before the examination, adequate notice will be provided even if it is not given at the same time the summons is issued.

Another commenter stated that the language in proposed section 162.1g(a), which enumerated the individuals to whom notice must be given, was too broad and did not follow the statutory language. Customs agrees and has modified the section accordingly.

12. One commenter pointed out that the phrase "or for his account" which appears in section 510(b)(1)(B), Tariff Act, did not appear in the sanctions listed in proposed section 162.1i. This section has been modified to include the appropriate language.

The comenter also pointed out that the phrase "failure of a person to comply with a summons" is not the same as the statutory language of "remain in contempt", which is found in section 509(b)(2), Tariff Act. Customs agrees and has redrafted § 162.1i accordingly.

13. Another commenter asked that a provision be added to indicate that

records may be maintained outside the United States.

Customs does not believe that maintaining records outside the United States is conducive to proper enforcement of the Act. In order that records pertaining to the importation of merchandise may be readily available for inspection, and to carry out the intent of the Act, Customs is of the opinion that records required to be maintained by the Act shall be located physically in the United States.

14. One commenter wanted U.S. consignees of Canadian merchandise who, through use of a customhouse broker acting as importer of record and paying duty on behalf of his Canadian client, receive the merchandise duty paid, and who presently do not keep records for U.S. Customs purposes, to be exempt from the recordkeeping requirements.

While there is no provision in the Act which would except U.S. importers of Canadian merchandise in the circumstances described from the need to keep records required of all other importers, the records to be kept are designated by the Act as records of the type which "are normally kept in the ordinary course of business". Thus, if records described above presently are not of a type kept in the ordinary course of business, there is no intention on the part of Customs to require the creation of a new class of records to burden the importers. Of course, regardless of the classes of records required to be kept by all importers under this new statutory provision, importers will frequently find it in their own interest to retain additional data, regardless of its form, which would substantiate their claims for beneficial Customs valuation, classification, or other treatment, where that data would not ordinarily appear in their normal business records.

15. Finally, one commenter recommended that consideration be given to further reducing the record retention periods.

While the Act establishes a 5-year period for retention of records, there are certain records which, in the opinion of Customs, need not be retained for the full 5-year period. There also are provisions in the regulations where no time limit is established or where a time limit of less than 5 years is established for records which Customs has concluded must be retained for the full 5-year period. Customs has identified certain records in the above categories. Following is a table describing these records and the retention period. These records are listed in the 1978 edition of the "Guide to Records Retention Requirement" published annually by the Office of the **Federal Register.** Records retention periods presently contained in various sections of the Customs Regulations are listed in the "Guide to Records Retention Requirements". The Guide informs the public (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept. The 1980 edition of that document will reflect the changes made herein.

The records retention requirements specified in this document shall apply to records presently required to be maintained by the Customs Regulations, as well as to records relating to entries or other transactions taking place on or after July 5, 1979.

Customs regulations section (19 CFR–)	Records to be maintained	Who must maintain records	Retention period now specified	Retention period
1. 10.8, 10.9 Articles exported for repairs, alterations or processing.	Certificate of registration	Owners, importers, consignees and agents.	2 years from date of final liquidation of final quantity covered by certificate of registration.	5 years from date of related entry.
2. 10.24 Documentation	Records of articles assembled abroad with U.S. components, showing quantities, sources, costs, dates shipped abroad, and other information necessary to waive certain entry requirements.	Importer and assembler	None	5 years from date of related entry.
3. 10.62 Bunker fuel oil	All pertinent records, including financial records relating to the withdrawal, delivery, or receipt of bunker fuel oil.	Withdrawer	None	5 years from date of liquidation of related entry.
4. 10.90 Master records and metal matrices.	Plant and account records relating to master records and metal matrices.	Importer and manufacturer	None	5 years from date of related entry.
5. 18.7 Verification of lading for exportation.	Records of claims and settlements of export freight charges, and any other records which may relate to the transaction.	Exporting carrier	None	5 years from date of exportation of merchandise.
6. 19.16 Cigar-manufacturing warehouses.	Records of each transfer of scraps, cuttings, and clippings to cigar or tobacco manufacturer operating under internal revenue laws, and transfer applications.	Proprietor of Class 6 bonded cigar manufacturing warehouse.	None	5 years from date of each transfer.
7. 19.34 Wheat	Records to verify handling and accounting for any increase or shortage.	Importers, exporters, warehouse proprietors, bonded common carriers, and others who handle imported wheat in Customs custody.	2 years after date of transaction	5 years from date of transaction.
8. 54.6 Metal articles imported to be used in remanufacture by melting; proof of intent.	Plant and import records relating to remanufacture.	Importer or plant manager	None	5 years from date of related entry.
9. 112.29 Licensing of cartmen and lightermen.	Written records relating to cartage and lighterage required by district directors of Customs.	Licensed cartmen and lightermen	None	3 years from expiration of related contract of cartage or lighterage.
10. 148.90 Foreign military personnel.	Records relating to entry and withdrawal of alcoholic beverages by foreign military personnel under item 822.20, Tariff Schedules of the United States.	Warehouse proprietor	At least 3 years from date of entry or withdrawal of the alcoholic beverages.	3 years from date of withdrawal of alcoholic beverages.
11. 151.44 Petroleum products subject to duty at a specific rate transferred to shore storage tanks.	Plans of each shore storage tank and certified gauge tables at oil company plant.	Storage tank proprietor	None	3 years from discontinuance of storage tanks as bonded warehouses for storage of imported petroleum products.

II. Customhouse Brokers

1. One commenter expressed concern that the Customs field personnel possibly could interpret proposed § 111.30 so that a broker's license would be cancelled because the broker was temporarily unemployed, semi-retired, on leave between jobs, or for any other reason actually was not engaged in the brokerage business.

Customs field personnel do not have the authority to cancel a broker's license. Under procedures set forth in Subpart D, Part 111, Customs Regulations, a broker's license may be cancelled only by the Commissioner of Customs. Further, Customs does not regard inactivity as a basis for cancellation.

2. Section 641 of the Tariff Act specifically requires reports on February 1, 1979, and on February 1 of each third year thereafter, stating whether the broker is actively engaged in business and the name under, and the address at which, business is being transacted. Proposed § 111.30 states the report may be filed before the February 1 date. One commenter correctly indicated that Customs would not want a report due on February 1, 1982, to be filed on January 1, 1980. To prevent this from occurring, the commenter recommended that the words "or before" be deleted from the proposal.

Customs believes it is unreasonable to expect every report to be filed on February 1 of a given year. The purpose of the law was to determine the status of a broker at a particular point in time (i.e., February 1 of every third year). If a report is received before February 1, the status may change before that date. To make the reporting requirement more reasonable, Customs believes a grace period should be given. Accordingly, proposed § 111.30 has been modified to provide that reports shall be filed on February 1, 1979, and on February 1 of each third year thereafter. However, a report received during the month of February will be considered as filed timely.

3. A commenter also pointed out that section 641 of the Tariff Act requires a report, but proposed § 111.30 requires two reports (one to be filed with Headquarters and one with the district director). The commenter suggests that one report filed with Headquarters should be sufficient.

Initially it should be noted that only one report is required. The original is to be sent to Customs Headquarters, with a copy of that report to be sent to each district director in whose district the broker is transacting business. Each district director will compile and make available to the public a current list of brokers licensed in the district based upon the information submitted in the copy of the report sent to the district director. This list is of benefit to the public seeking a broker to handle their Customs transactions, to Customs officers, and to the brokers themselves. Accordingly, the requirement that a copy of the report be submitted to each district director in whose district business is being transacted is retained.

4. A commenter noted that proposed § 111.30 uses the phrase "transacting Customs business" and indicated that a broker might transact some sort of Customs business as an individual, e.g., a resident returning from vacation, rather than in his capacity as a broker. The commenter recommended that the quoted language be changed to "transacting business as a customhouse broker". Customs agrees with this comment and § 111.30 has been revised accordingly.

5. The commenter also indicated that the proposed regulation would require the individual broker to list his branch offices in each Customs district for which he is licensed and noted that there is no authority for the requirement. Customs agrees and this requirement has been deleted.

6. The same commenter recommended that § 111.52, relating to revocation of a broker's license by operation of law, be modified to indicate that if a report is not received within 60 days after due, it will be assumed that the broker is no longer active, and Customs will "close" the broker's license. A broker would be eligible to do business again if the report were filed thereafter.

Customs does not agree with this recommendation. Failure to file the report when due could be a basis for revocation or suspension of the license for failure to comply with the reporting requirement. The fact, however, that a broker is "inactive" is not a basis for cancellation of, or to "close", the license.

III. Trademarks

1. One commenter objected to that portion of proposed section 133.25, which states that the Commissioner of Customs shall dispose of forfeited trademarked articles after obliteration of the trademark "where feasible". The regulatory language is derived directly from section 526(e) of the Tariff Act, as amended by the Act. Because Congress has evidenced its intention that the trademark be obliterated only where feasible, Customs believes it has no authority to modify the requirement.

2. Several commenters contended that proposed section 133.25 was deficient in that it failed to provide the importer of goods bearing allegedly counterfeit trademarks a means of contesting a determination that the trademarks are counterfeit. The commenters believed that the section should be revised to provide for an appeal procedure.

Customs is of the opinion that there are already adequate procedures in the regulations to contest or appeal a decision. For example, Part 171 provides procedures for petitioning for relief from fines, penalties, and forfeitures; § 174.11(d) authorizes the filing of a protest from the exclusion of merchandise from entry or delivery under any provision of the Customs laws; and § 177.11(b) sets forth a procedure for obtaining internal advice.

3. One commenter noted that proposed § 133.22(c) indicates that unless the trademark owner consents to some other disposition, merchandise bearing a counterfeit trademark will be disposed of in accordance with § 133.25. The commenter pointed out that this appears to be in conflict with the right of the importer to petition for relief under Part 171, Customs Regulations. The commenter recommended that § 133.22(c) be qualified to take into account the availability of this right to petition. While Customs does not believe there is a conflict, the provision has been modified to clarify that there is a right to petition for relief and incorporated in a new § 133.23a.

4. Two commenters objected to the provisions of proposed § 133.25(c), which provides for sale of forfeited trademarked articles. The commenters stated that the provision would have the effect of putting merchandise bearing a counterfeit trademark into the commerce of the United States even if the trademark were obliterated, thus displacing the sale of legitimate articles. The commenters were of the opinion the articles should be destroyed. The commenters further suggested that royalties could be denied if the trademarked articles also were copyrighted.

While sympathetic to these arguments, Customs is bound to follow the disposition provisions set forth in section 526(e) of the Tariff Act, from which proposed § 133.25(c) is derived.

5. Based upon Customs review, it has been concluded that the language of proposed § 133.25 would be more appropriate in present § 133.52 of the regulations (19 CFR 133.52). Accordingly, the language of proposed § 133.25 is incorporated as a new paragraph (c) in present § 133.52.

6. Because section 526(e) of the Tariff Act, added by P.L. 95–410, relates only to the seizure and forfeiture of articles bearing a counterfeit trademark, a new

§ 133.23a, concerning seizure and notification procedures, and a new § 133.52(c), relating to disposition procedures, applicable to such articles, have been added to the regulations, and the provisions of §§ 133.21, 133.23(b), and 133.51 have been limited in scope to articles other than those bearing a counterfeit trademark.

IV. Editorial Change

As a part of the conforming amendments required by P.L. 95–410, published in the **Federal Register** as T.D. 78–394 on October 25, 1978 (43 FR 49784), § 148.84, Customs Regulations, was amended. This section implemented section 215 of the Act, which prohibits admission of the baggage and effects without entry for all individuals returning to the United States, except where otherwise provided by law; and provides that no individual shall be entitled to expedited Customs examination and clearance of his or her baggage and effects except under special circumstances, including when that individual is seriously ill or infirm, summoned home by news of affliction or disaster, or accompanying the body of a deceased relative. Because the title to Subpart I of Part 148, Customs Regulations, "Personnel of Foreign Governments and International Organizations", no longer is descriptive of § 148.84, the subpart title has been changed to "Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals".

V. Country of Origin Marking

Section 304 of the Tariff Act requires, with certain exceptions, that every article of foreign origin imported into the United States shall be marked with the name of the country of origin in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit. If the imported article is found upon examination not to be marked properly, the district director sends a Notice of Redelivery (Customs Form 4647) to the importer, giving him notice to properly mark the merchandise or return it to Customs custody for marking, exportation, or destruction.

Section 134.54(a), Customs Regulations (19 CFR 134.54(a)), provides that in the event the importer has not properly marked or redelivered the merchandise to Customs custody for marking, exportation, or destruction within 30 days from the date of Notice of Redelivery, the district director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not returned, plus any estimated duty as determined at the time of entry.

Under an administrative practice, however, Customs, for good cause, has been allowing an importer additional time to mark the merchandise properly or to redeliver it. Section 134.54(a) has been amended to reflect this practice.

Inapplicability of E.O. 12044

This document is not subject to the Treasury Department directive implementing E.O. 12044, "Improving Government Regulations", because preliminary work on the subject matter was begun before May 22, 1978, the effective date of the Department directive.

Drafting Information

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendments to the Regulations

Parts 10, 11, 18, 19, 54, 111, 112, 133, 134, 148, 151, and 162, Customs Regulations (19 CFR Parts 10, 11, 18, 19, 54, 111, 112, 133, 134, 148, 151, 162), are amended as set forth below.

George C. Corcoran, Jr.,
Commissioner of Customs.

Approved: May 23, 1979.

Richard J. Davis,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.8 [Amended]
§ 10.9 [Amended]

1. Sections 10.8(g), 10.8(h), 10.9(g), and 10.9(h) are amended by substituting the phrase "5 years from the date of the related entry of the merchandise" for "2 years after the final liquidation of the final quantity".

2. The last sentence of § 10.24(d) is amended to read as follows:

§ 10.24 Documentation.

* * * * *

(d) *Waiver of specific details for each entry.* * * * These records shall be maintained by the importer and assembler for 5 years from the date of the related entry in a manner so that they are readily available for audit, inspection, copying, reproduction, or other official use by authorized Customs officers.

* * * * *

3. A second sentence is added to § 10.62(f), to read as follows:

§ 10.62 Bunker fuel oil.

* * * * *

(f) * * * The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry.

4. A second sentence is added to § 10.90(b), to read as follows:

§ 10.90 Master records and metal matrices.

* * * * *

(b) * * * The importer (and the manufacturer, if the two are not identical) shall maintain plant and accounting records relating to the master records and metal matrices for 5 years from the date of the related entry of the merchandise.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 11—PACKING AND STAMPING: MARKING

Section 11.13(d) is amended by substituting a comma for the period at the end of the section and adding "except articles disposed of under § 133.52 (a) or (b) of this chapter."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

A third sentence is added to § 18.7(c) to read as follows:

§ 18.7 Landing for exportation, verification of.

* * * * *

(c) * * * The exporting carrier shall maintain these records for 5 years from the date of exportation of the merchandise.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

The introductory material to § 19.16(h) immediately preceding the form is amended to read as follows:

§ 19.16 Cigar-manufacturing warehouses.

* * * * *

(h) Proprietors of premises bonded for the manufacture of cigars may remove scraps, cuttings, and clippings of tobacco produced in the premises for transfer to cigar or tobacco

manufacturers operating under the internal revenue laws. The proprietor shall maintain a record for 5 years from the date of each transfer of scraps, cuttings and clippings. The application and permit for the transfer shall be in the following form:

APPLICATION AND PERMIT FOR TRANSFER OF SCRAPS, CUTTINGS, AND CLIPPINGS

* * * * *

2. The third sentence of § 19.34 is amended to read as follows:

§ 19.34 Customs supervision.

* * * These records shall be retained for a period of 5 years from the date of the transaction.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

Section 54.6(c) is amended by adding at the end thereof a new sentence to read as follows:

§ 54.6 Proof of intent; bond; proof of use; liquidation.

* * * * *

(c) * * * The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 111—CUSTOMHOUSE BROKERS

§ 111.23 [Amended]

1. Section 111.23(a) is amended by substituting "5 years" for "6 years" wherever it appears.

§ 111.25 [Amended]

2. Section 111.25 is amended by substituting "in accordance with the provisions of §§ 162.1a through 162.1i" for "on demand".

§ 111.26[Amended]

3. Section 111.26 is amended by substituting "Except in accordance with the provisions of §§ 162.1a through 162.1i, a" for "A" at the beginning of the section.

4. Section 111.30 is amended by changing the section heading and adding a new paragraph (d) to read as follows:

§ 111.30 Change of business address, organization, or name; status report.

* * * * *

(d) *Status report.* Each customhouse broker shall file a status report with Customs on February 1, 1979, and on February 1 of each third year thereafter. A report received during the month of February will be considered filed timely. The report shall be filed with the Commissioner of Customs, U.S. Customs Service, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229. A copy also shall be filed with the District Director of Customs in each district where the broker is licensed to transact Customs business. No form or particular format is required. Each individual broker shall state whether he is actively engaged in transacting business as a customhouse broker. If so, he shall state the name under, and the address at which, his business is conducted (if he is a sole proprietor); or the name and address of his employer, unless his employer is a corporate, partnership or association broker for which he is a qualifying officer or member. The report of each corporation, partnership, or association shall state the name under which its business as a customhouse broker is being transacted, its business address, the names and addresses of the members of the partnership or officers of the corporation or association qualifying it for a license, and whether it is actively engaged in transacting business as a customhouse broker.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

A second sentence is added to § 112.29(a) to read as follows:

§ 112.29 Records.

(a) *Records of cartage and lighterage.* * * * Cartmen and lightermen shall maintain these records for 3 years from the expiration date of the related contract for cartage or lighterage.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. Section 133.21(c) is amended by deleting "or" at the end of subparagraph (5), replacing the period at the end of subparagraph (6) with a semicolon followed by the word "or", and adding a new subparagraph (7) to read as follows:

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

* * * * *

(c) *Restrictions not applicable.* * * *

(7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under § 148.55 of this chapter.

2. Section 133.21 is further amended by adding a new paragraph (d) to read as follows:

* * * * *

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(4) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.24).

3. Section 133.23(b) is amended by adding a new subparagraph (3) to read as follows:

§ 133.23 Release of detained articles.

* * * * *

(b) *Articles accompanying importer.* * * *

(3) The provisions of subparagraphs (1) and (2) are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.24) or to trademarked articles exempt from import restrictions under section 526(d), Tariff Act of 1930, as amended (19 U.S.C. 1526(d)) (see § 148.55 of this chapter).

4. Part 133 is amended by adding a new § 133.23a to read as follows:

§ 133.23a Articles bearing counterfeit trademarks.

(a) *Definition.* A "counterfeit trademark" is a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the Customs laws.

(c) *Notice to trademark owner.* The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of Part 171 of this chapter.

5. The introductory sentence to § 133.51(b) is amended to read as follows:

§ 133.51 Relief from forfeiture or liquidated damages.

* * * * *

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a

petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

* * * * *

6. Section 133.52 is amended to read as follows:

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* The Commissioner of Customs or his designee shall dispose of forfeited articles bearing a counterfeit trademark after obliteration of the trademark, where feasible, in the following manner:

(1) *Government use.* By delivery to any Federal, State, or local government agency which, in the opinion of the Commissioner or his designee, has established a need for the article.

(2) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the article.

(3) *Sale.* If more than 1 year has passed since the forfeiture, the article may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall determine that a need for the article has not been established by any eligible government organization or charitable institution under paragraph (c)(1) or (c)(2) of this section.

(4) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 134—COUNTRY OF ORIGIN MARKING

Section 134.54(a) is amended to read as follows:

§ 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the district director may allow for good cause shown, the importer does not properly mark or redeliver the merchandise previously released to him, the district director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redeliverd, plus any estimated duty thereon determined at the time of entry.

* * * * *

(R.S. 251, as amended, secs. 304, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1304, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. Part 148 is amended by adding a new § 148.55 to read as follows:

§ 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption.* An exemption is provided for trademarked articles accompanying any person arriving in the United States which would be prohibited entry under section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the United States when imported for the arriving person's personal use in the quantities provided in pararaph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations.*—(1) *30-day period.* The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which the claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(2) *Sale of exempted articles.* If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities.* Generally, each person arriving in the United States may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the **Federal Register** a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

2. The title to Subpart I is amended to read "Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals".

3. The first sentence of § 148.90(d)(3) is amended to read as follows:

§ 148.90 Foreign military personnel.

* * * * *

(d) *Alcoholic beverages for personal or family use.*

* * * * *

(3) *Retention and verification of the warehouse proprietor's records.* The warehouse proprietor shall retain all records relating to the entry and withdrawal of alcoholic beverages under item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202), for 3 years from the date of the entry against which the withdrawal of the alcoholic beverages is charged.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

A fifth sentence is added to section 151.44(a) to read as follows:

§ 151.44 Storage tanks.

(a) *Plans and gauge tables.*

* * * The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum products.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 162—RECORDKEEPING INSPECTION, SEARCH, AND SEIZURE

1. The title to Part 162 is amended to read *"Part 162—Recordkeeping, Inspection, Search, and Seizure"*, as set forth above.

2. Section 162.0 is amended by deleting the first sentence and inserting the following two sentences in lieu thereof:

§ 162.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the examination of records and persons in connection with any audit or other inquiry or investigation conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duties and taxes due or which may be due, for determining liability for fines, penalties, and forfeitures, or for insuring compliance with the laws and regulations administered by Customs. It also contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property.

* * *

3. Part 162 also is amended by deleting §§ 162.1 and 162.2, by amending the title to Subpart A to read "Subpart A—Recordkeeping, Inspection, Examination and Search", and by adding new §§ 162.1a through 162.1i to read as follows:

§ 162.1 [Reserved]

§ 162.1a Definitions.

When used in §§ 162.1a through 162.1i, the following terms shall have the meaning indicated:

(a) *Records.* "Records" means:

(1) Statements, declarations, books, papers, correpondence, accounts, technical data, automated record storage devices (e.g., magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents which:

(i) Pertain to any importation, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the entry of merchandise;

(ii) Are of the type normally kept in the ordinary course of business; and

(iii) Are sufficiently detailed:

(A) To establish the right to make entry,

(B) To establish the correctness of any entry,

(C) To determine the liability of any person for duties and taxes due, or which may be due, the United States,

(D) To determine the liability of any person for fines, penalties, and forfeitures, and

(E) To determine whether the person has complied with the laws and regulations administered by the Customs Service; and

(2) Any other documents required under laws or regulations administered by the Customs Service.

(b) *Third-party recordkeeper.* "Third-party recordkeeper" means any Customs broker, attorney, or accountant.

(c) *Summons.* "Summons" means any summons issued under this subpart which requires either the production of records or the giving of testimony, or both.

(d) *Technical data.* "Technical data" includes records, diagrams, and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media.

§ 162.1b Recordkeeping.

(a) *Who must keep records.* Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any merchandise into the Customs territory of the United States, shall make and keep records as defined in § 162.1a(a).

(b) *Domestic transaction excluded.* A person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported and is not required to make and keep records unless:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

§ 162.1c Record retention period.

Unless a different period of time is provided elsewhere in the chapter with respect to a specific type of record, any record required or made under § 162.1b shall be kept for 5 years from the date of entry of the merchandise.

§ 162.1d Examination of records and witnesses.

(a) *Examination.* During the course of any inquiry or investigation initiated:

(1) To determine the correctness of any entry, the liability of any person for duties and taxes due or which may be due, or any liability for fines, penalties and forfeitures, or

(2) To insure compliance with the laws and regulations administered by the Customs Service, any Customs officer, during normal business hours and, to the extent possible, at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant records, statements, declarations, or other documents by providing the person with reasonable notice, either orally or in writing, which describes the records with reasonable specificity.

(b) *Summons.* During the course of any inquiry or investigation initiated for the reasons set forth in paragraph (a) of this section, the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of district director (area director in region II) or special agent in charge, upon reasonable notice, may issue a summons to:

(1) Any person who imported merchandise, or knowingly caused merchandise to be imported,

(2) Any officer, employee, or agent of a person who imported merchandise or knowingly caused merchandise to be imported,

(3) Any person having possession, custody, or care of records relating to importations, or

(4) Any other person deemed proper to either produce records or give testimony, or both.

(c) *Transcript of testimony under oath.* Testimony of any person taken under paragraph (a) or (b) of this section may be taken under oath and when so taken shall be transcribed. When testimony is transcribed, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of a Customs officer.

§ 162.1e Contents of summons.

(a) *Summons for person.* Any summons issued under § 162.1d(b) to compel appearance shall state:

(1) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(2) The address where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(3) The time of appearance; and

(4) The name, address, and telephone number of the Customs officer issuing the sommons.

(b) *Summons of records.* If the summons requires the production of

records, the summons, in addition to containing the information required by paragraph (a) of this section, shall describe the records with reasonable specificity.

§ 162.1f Service of summons.

(a) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this part.

(b) *Method of service*—(1) *Natural person.* Service upon a natural person shall be made by personal delivery.

(2) *Corporation, partnership, or association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states.

§ 162.1g Third-party recordkeeper.

(a) *Notice.* Except as provided by paragraph (f) of this section, if a summons issued under § 162.1d to a third-party recordkeeper requires the production of records or testimony relating to import transactions of any person other than the person summoned, and the person is identified in the description of the records in the summons, notice of the summons shall be provided the person identified in the description of the records contained in the summons.

(b) *Time of notice.* Notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 162.1f, but in no event shall notice be given less than 10 business days before the date set in the summons for the examination of records or persons.

(c) *Contents of notice.* The issuing officer shall insure that any notice issued under this section includes a copy of the summons and contains the following information:

(1) That compliance with the summons may be stayed if written direction is given by the person receiving notice to the person summoned not to comply with the summons.

(2) That a copy of the direction not to comply and a copy of the summons shall be mailed by registered or certified mail to the person summoned at the addresses in the summons and to the issuing Customs officer.

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given.

(d) *Service of notice.* The issuing officer shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 162.1f for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination precluded.* If notice is required by this section, no records may be examined and no testimony may be taken before the date fixed in the summons as the date to examine the records or to take the testimony. If the owner, importer, consignee, or their agent, or any other person concerned issues a stay of the summons, no examination shall take place, and no testimony shall be taken, without the consent of the person staying compliance, or without an order issued by a U.S. district court.

(f) *Exceptions to notice*—(1) *Personal liability for duties and taxes.* This section does not apply to any summons served on the person, or any officer or employee of the person, with respect to whose liability for duties and taxes the summons is issued.

(2) *Verification.* This section does not apply to any summons issued to determine whether or not records of the import transactions of an identified person have been made or kept.

(3) *Court order.* Notice shall not be given if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe giving notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 162.1h Enforcement of summons.

Whenever any person does not comply with a summons issued under § 162.1d, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S district court for the district in which the person is found or resides or is doing business.

§ 162.1i Failure to comply with court order.

(a) *Importations prohibited.* If a person fails to comply with a court order enforcing the summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt,

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account, and

(2) May withhold delivery of merchandise imported by that person, directly, or indirectly, or for that person's account.

(b) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery, the merchandise shall be considered abandoned, and shall be sold at public auction or otherwise disposed of in accordance with Subpart E of this part.

§ 162.2 [Reserved]

4. Section 162.46(a) is amended by deleting the period and adding "or section 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b))."

5. Section 162.46 is further amended by amending the section heading and by adding a new paragraph (e) to read as follows:

§ 162.46 Summary forfeiture where value not over $10,000; Disposition of goods.

* * * * *

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the Commissioner of Customs or his designee determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency, or

(2) By gift to any charitable institution the Commissioner of Customs or his designee determines has a need for the articles for medical purposes.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 79-17246 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 159

[T.D. 79-158]

Countervailing Duties—Certain Fasteners From Japan

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

ACTION: Final Countervailing Duty Determination and Suspension of Liquidation.

SUMMARY: This notice is to inform the public that it has been determined that the Government of Japan has granted benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture and exportation of certain industrial fasteners from Japan. Estimated countervailing duties in the amount of these benefits will be collected in addition to duties normally due on shipments of this merchandise.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: David Chapman, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On May 6, 1977, a Countervailing Duty Order was published in the **Federal Register** with respect to certain industrial fasteners from Japan (T.D. 77-128, 41 FR 23146). As a result of that order, which applied to nuts and bolts entering the United States under item numbers 646.54 and 646.56 of the Tariff Schedules of the United States (TSUS), a countervailing duty of 0.2 percent *ad valorem* was imposed. The programs found to constitute the bestowal of a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the Act"), were: (1) The deferral of income taxes on export earnings under the Overseas Market Development Reserve (OMDR) and (2) export promotional assistance provided by the Japanese External Trade Organization (JETRO).

On March 23, 1979, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the **Federal Register** (44 FR 17851). The notice stated that a petition in proper form was received on February 22, 1979, alleging that payments or bestowals conferred by the Government of Japan upon the manufacture, production or exportation of certain industrial fasteners constitute the payment or bestowal of a bounty or grant within the meaning of section 303 of the Act. The industrial fasteners referred to in that notice enter the United States under the following item numbers of the Tariff Schedules of the United States (TSUS): 646.17, 646.40, 646.41, 646.49, 646.51, 646.53, 646.58, 646.60, 646.63, 646.65, 646.72, 646.74, 646.75, 646.76, 646.78.

On April 19, 1979, an "Amended Notice of Receipt of Countervailing Duty Petition and Initiation of Investigation, and Notice of Preliminary Countervailing Duty Determination" was published in the **Federal Register** (44 FR 23237). By this notice, the notice of March 23 was amended to include industrial fasteners which enter the United States under TSUS item numbers 646.54 and 646.56. (The investigation has been limited to the determination of the bestowal of bounties or grants on non-metric industrial fasteners). The April 19, 1979 notice stated that it had been determined preliminarily that benefits have been received by the Japanese manufacturers/exporters of certain industrial fasteners, which may constitute bounties or grants within the meaning of section 303 of the Act. Specifically under the "Temporary Measures Act for Small and Midsize Businesses With Regard to the High Yen Exchange Market" which has been in operation since October 1977.

Based upon the information available to the Treasury, the Japanese industrial fastener industry is eligible for, and, in fact, receives, benefits under the program established under the "Temporary Measures Act for Small and Midsize Businesses With Regard to the High Yen Exchange Market". This program established a number of methods by which the Government of Japan can provide assistance to small and midsize Japanese firms which export and whose competitiveness has been adversely affected by the rapid appreciation of the yen. Assistance is provided in the form of: (1) Low cost loans; (2) deferment of repayment of loans; (3) the right to carry back current losses related to yen appreciation up to three years to offset income, corporate and local taxes paid in prior years; and (4) special government credit guarantees for firms affected by yen appreciation over and above those otherwise offered to small and midsize businesses.

In light of the eligibility criteria, which limit utilization of the program to firms which export, this program clearly constitutes the bestowal of a bounty or grant within the meaning of the Act. In the context of the Treasury's outstanding Countervailing Duty Order (T.D. 77-128) concerning certain fasteners from Japan, published in the **Federal Register** of May 6, 1977, (42 FR 23146), the Treasury requested, on November 7, 1978, information from the Government of Japan regarding the degree of utilization of these various forms of assistance. Based upon the information supplied, it is apparent that the fastener industry has utilized at least some forms of the assistance; however, the data supplied is inadequate to allow a definitive calculation of the benefits bestowed or to identify the extent of utilization of the program by individual Japanese fastener manufacturers/exporters.

Since the November 7, 1978, request for information inquired into the extent to which benefits had been received by members of the Japanese fastener industry, which industry manufactures/exports the TSUS item numbers covered in this instant investigation, under the programs established under the "Temporary Measures Act for Small and Midsize Businesses With Regard to the High Yen Exchange Market", it was not necessary to again request that information, for purposes of the instant investigation.

After consideration of all the information received, it is hereby determined that exports of certain fasteners from Japan benefit from bounties or grants, in consequence of the program described above within the meaning of section 303 of the Act.

Accordingly, notice is hereby given that certain fasteners covered under TSUS item numbers 646.54 and 646.56, covered under Treasury Decision 77-128, are benefiting from additional bounties or grants within the meaning of section 303 of the Act. The aggregate estimated benefit to exports of these fasteners is 4.2 percent *ad valorem*. Further, notice is hereby given that certain fasteners covered under TSUS item numbers 646.17, 646.40, 646.41, 646.49, 646.51, 646.53, 646.57, 646.58, 646.60, 646.63, 646.65, 646.72, 646.74, 646.75, 646.76, and 646.78, are benefiting from bounties or grants under the program described above, within the meaning of section 303 of the Act. The aggregate estimated benefit to exports of these fasteners is 4 percent *ad valorem*. These estimates have been made in the absence of information regarding benefits specifically conferred on manufacturers producing these fasteners. Absent exact data on which the benefits received may be precisely quantified, these amounts are sufficient to protect the revenue. Estimates of the net amount of such bounties or grants will be reviewed upon receipt of information of the precise benefit received by individual Japanese fastener manufacturers/exporters.

Accordingly, notice is hereby given that the merchandise which is the subject of this determination, imported directly or indirectly, from Japan, if entered, or withdrawn from warehouse, for consumption on or after June 4, 1979, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of such fasteners.

In accordance with section 303 of the Act, and until further notice, the net amount of such bounties or grants has been estimated and declared to be 4.2 percent *ad valorem* in the case of certain fasteners covered under TSUS item numbers 646.54 and 646.56, and 4 percent *ad valorem* in the case of certain fasteners covered under TSUS item numbers: 646.17, 646.40, 646.41, 646.49, 646.51, 646.53, 646.58, 646.60, 646.63, 646.65, 646.72, 646.74, 646.75, 646.76 and 646.78.

Effective on June 4, 1979, and until further notice, upon the entry, or withdrawal from warehouse for, consumption of this merchandise imported directly or indirectly from Japan, which benefits from these bounties or grants, there shall be deposited, in addition to any other duties estimated or determined to be due, countervailing duties in the amount estimated in accordance with the above declaration. To the extent it can be established to the satisfaction of the Commissioner of Customs that imports of the merchandise covered by this determination are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be deposited.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Japan under the Commodity heading "Certain Fasteners" the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Bounty Declared-Rate" under the column headed "Action".

(R.S. 251, secs. 303, as amended 624; 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624))

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

Robert H. Mundheim,

General Counsel of the Treasury.

May 29, 1979.

[FR Doc. 79-17278 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-22-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI 5493]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency. [1]

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

§ 1914.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Arizona	Maricopa	Avondale, city of	040038-B	Aug. 25, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Feb. 15, 1974 and Jan. 16, 1976	June 15, 1979

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Connecticut	Fairfield	Brookfield, town of	090003-B	June 25, 1975, emergency, June 15, 1979, regular June 15, 1979, suspended.	July 26, 1974 and Sept. 17, 1976	Do.
Do	New Haven	Hamden, town of	090078-B	May 3, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Jan. 16, 1974 and May 17, 1977	Do.
*Do	Fairfield	Newton, town of	090011-B	Aug. 28, 1975, emergency, June 15, 1979, regular June 15, 1979, suspended.	Oct. 18, 1974 and May 31, 1977	Do.
Illinois	Kane and Du Page	Aurora, city of	170320-B	Apr. 9, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 14, 1974 and Sept. 24, 1976	Do.
Do	Lake	Bannockburn, village of	170359-B	Mar. 7, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Feb. 1, 1974 and Feb. 13, 1976	Do.
Do	Cook and Du Page	Elk Grove, village of	170088-B	Nov. 3, 1972, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 2, 1973 and June 25, 1976	Do.
Do	Cook	Glenview, village of	170096-B	Jan. 26, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 28, 1974 and Sept. 12, 1975	Do.
Do	Morgan	Jacksonville, city of	170516-B	Sept. 4, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	July 19, 1974 and Aug. 20, 1976	Do.
Do	Cook	Morton Grove, village of	170128-B	Sept. 12, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 1, 1974 and Apr. 30, 1976	Do.
Do	do	Niles, village of	170130-B	Feb. 24, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 29, 1974 and Mar. 26, 1976	Do.
Do	Iroquois	Watseka, city of	170297-B	Dec. 10, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 8, 1974	Do.
Do	Du Page	Wheaton, city of	170221-B	Aug. 5, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Apr. 5, 1974 and Sept. 26, 1975	Do.
Do	do	Woodridge, village of	170737-A	Aug. 7, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Apr. 5, 1974	Do.
Do	McHenry	Woodstock, city of	170488-B	June 12, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 22, 1974 and Mar. 19, 1976	Do.
Indiana	Delaware	Albany, town of	180314-B	June 13, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 23, 1973 and May 21, 1976	Do.
Do	do	Eaton, town of	180052-B	Nov. 11, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 23, 1973 and Apr. 9, 1976	Do.
Iowa	Polk	Urbandale, city of	190230-B	June 24, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 24, 1974 and Sept. 19, 1975	Do.
Do	do	Windsor Heights, city of	190687-B	Oct. 7, 1977, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Oct. 22, 1976	Do.
Kentucky	Kenton	Covington, city of	210129-B	Mar. 19, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 15, 1974 and Mar. 5, 1976	Do.
Massachusetts	Middlesex	Concord, town of	250189-A	June 9, 1972, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Sept. 6, 1974	Do.
Do	do	Maynard, town of	250204-B	Jan. 16, 1976, emergency, June 15, 1979, regular, June 15, 1979, suspended.	July 26, 1974 and Dec. 10, 1976	Do.
Do	Essex	West Newbury, town of	250108-A	Aug. 16, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Aug. 16, 1974	Do.
Michigan	Genesee	Atlas, township of	260393-A	Sept. 2, 1976, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 26, 1976	Do.
Do	Oakland	Beverly Hills, village of	260256-B	Nov. 2, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Feb. 22, 1974 and June 11, 1976	Do.
Do	Genesee	Davison, township of	260664-B	Mar. 6, 1979, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Oct. 21, 1977	Do.
Do	do	Flushing, city of	260077-B	June 6, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 17, 1974	Do.
Do	Wayne	Gibralter, city of	260226-B	Feb. 9, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 28, 1974 and Aug. 1, 1975	Do.
Do	Lapeer	Lapeer, city of	260112-B	Nov. 25, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 17, 1974	Do.
Do	Wayne	Rockwood, city of	260241-B	Apr. 24, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 2, 1973 and Mar. 14, 1975	Do.
Do	Saginaw	Spaulding, township of	260303-A	Aug. 6, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Jan. 24, 1975	Do.
Minnesota	Wilken	Breckenridge, city of	275232-A	Sept. 4, 1970, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Sept. 2, 1970	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Norman	Halstad, city of	270324-B	Feb. 5, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 24, 1974 and Dec. 13, 1974	Do.
Do	do	Perley, city of	270326-A	Apr. 26, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Oct. 25, 1974	Do.
Missouri	Platte	Dearborn, city of	290504-A	Aug. 9, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Sept. 15, 1975	Do.
Do	St. Louis	Des Peres, city of	290347-B	Dec. 26, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 13, 1977	Do.
Do	Jackson	Grandview, city of	290171-B	Mar. 16, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	July 19, 1974 and Jan. 23, 1976	Do.
Do	St. Louis	Jennings, city of	290360-B	Dec. 19, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Feb. 1, 1974 and Aug. 15, 1975	Do.
Do	New Madrid	New Madrid, city of	290256-B	Dec. 11, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 31, 1974 and Nov. 14, 1975	Do.
Do	Platte	Tracy, city of	290297-A	July 25, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 22, 1974	Do.
Nebraska	Scottsbluff	Scottsbluff, city of	310206-B	Apr. 8, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Apr. 5, 1974 and July 23, 1976	Do.
New Hampshire	Hillsborough	Nashua, city of	330097-B	Feb. 6, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Aug. 23, 1974 and Mar. 12, 1976	Do.
Do	Merrimack	Northfield, town of	330118-B	Oct. 14, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 22, 1974 and Feb. 11, 1977	Do.
Do	Rockingham	Salem, town of	330142-B	Apr. 15, 1977, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Apr. 29, 1977	Do.
New Jersey	Ocean	Island Heights, borough of	340374-B	Sept. 6, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	July 19, 1974 and Dec. 19, 1975	Do.
New York	Westchester	Elmsford, village of	360910-B	June 27, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Apr. 12, 1974 and May 28, 1976	Do.
Do	Orange	Greenwood Lake, village of	360616-B	Jan. 23, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 3, 1974 and July 23, 1976	Do.
Do	Nassau	Hewlett Harbor, village of	360469-B	Nov. 2, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 8, 1974 and June 25, 1976	Do.
Do	Westchester	Mamaroneck, town of	360917-A	May 12, 1972, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 15, 1979	Do.
Do	Dutchess	Wappinger, town of	361387-A	Feb. 12, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Nov. 29, 1974	Do.
Ohio	Franklin	Valleyview, village of	390669-A	Apr. 17, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	July 11, 1975	Do.
Oregon	Polk and Marion	Salem, city of	410167-B	Dec. 3, 1971, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Aug. 9, 1974 and July 2, 1976	Do.
Pennsylvania	Allegheny	Dravosburg, borough of	420027-B	Feb. 7, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Dec. 28, 1973	Do.
Do	do	Glassport, borough of	420038-B	Jan. 30, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Dec. 7, 1973 and June 18, 1976	Do.
Do	Philadelphia	Philadelphia, city of	420757-B	Jan. 14, 1972, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Dec. 6, 1974 and Feb. 27, 1976	Do.
Do	McKean	Port Allegany, borough of	420671-B	June 1, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 28, 1974	Do.
Do	Berks	Shoemakersville, borough of	420149-B	Mar. 26, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Mar. 22, 1974 and May 14, 1976	Do.
Texas	Cameron	Unincorporated areas	480101-A	Aug. 14, 1970, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 15, 1979	Do.
Do	Gonzales	Gonzales, city of	480254-B	Aug. 6, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 24, 1974 and Apr. 30, 1976	Do.
Virginia		Charlottesville, city of	510033-C	July 10, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 24, 1975 and Jan. 3, 1975	Do.
Do		Richmond, city of	510129-B	Aug. 29, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Dec. 6, 1974 and Jan. 3, 1975	Do.
Washington	Grays Harbor	Hoquiam, city of	430061-B	Mar. 27, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended.	June 28, 1974 and Mar. 19, 1976	Do.
West Virginia	Jefferson	Ranson, town of	540068-C	Apr. 2, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 3, 1974 and Apr. 25, 1975	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Wisconsin	Kewaunee	Algoma, city of	550213-B	Aug. 29, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	Jan. 9, 1974 and Apr. 16, 1976	Do.
Do	Milwaukee	Hales Corners, village of	550524-B	Nov. 13, 1973, emergency, June 15, 1979, regular, June 15, 1979, suspended.	May 3, 1974 and Nov. 26, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 22, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-17029 filed 6-1-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Parts 1201, 1203, 1212, 1214, 1216, 1220, 1221, and 1250

[DLPR 4105.1]

Defense Logistics Procurement Regulation; Effective Date Change

AGENCY: Defense Logistics Agency (DLA).

ACTION: Final rule.

SUMMARY: The "Effective Date" cited in the notice of the Defense Logistics Agency Final Rule contained on page 27096 of Volume 44, No. 91, dated May 9, 1979 is changed from "As specified in the final rule" to April 6, 1979.

EFFECTIVE DATE: April 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. G. Dean Fogle, Commercial, AC 202–274–6431, Autovon, 284–6433

Louise Meehan,

DLA Liaison, Certifying, and Authorizing Officer with the Office of the Federal Register.

[FR Doc. 79-17255 Filed 6-1-79; 8:45 am]

BILLING CODE 3620-01-M

POSTAL SERVICE

39 CFR Parts 10, 111, and 601

International Postal Service; General Information on Postal Service; Procurement of Property and Services; Incorporations by Reference

of the Federal Register, under 5 U.S.C. 552(a) and 1 CFR Part 51, grants approval to extend, from July 1, 1979 until July 1, 1980, the following incorporations by reference: Postal Service Publication No. 42, International Mail (39 CFR 10.4); Chapter I of the Postal Service Manual (39 CFR 111.4); and Publication No. 41, Postal Contracting Manual (39 CFR 601.100).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1238-7]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces approval of two revisions to the New Jersey State Implementation Plan for the attainment and maintenance of air quality standards. One revision is the incorporation into the plan of certain changes the State requested be made to its regulation entitled, *Sulfur in Fuels.* These changes will provide for less restrictive sulfur content limitations than now applicable to fuels used in Atlantic, Cape May, Cumberland, Ocean, Salem, Burlington, Camden, Gloucester, and Mercer Counties. These changes to the New Jersey regulation complement changes to the Pennsylvania State Implementation Plan and are intended to resolve regulatory inconsistencies among the various jurisdictions in the Philadelphia Interstate Air Quality Control Region in a manner which protects air quality. The other plan revision being approved here will serve to protect this interstate control strategy by requiring a satisfactory air quality impact analysis and, if called for, emission reduction strategy prior to the granting of State permits for two potential power plant coal conversions.

DATE: This action becomes effective June 4, 1979.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007, 212–264–2517.

SUPPLEMENTAL INFORMATION: On August 10, 1978 the Environmental Protection Agency (EPA) received from New Jersey a proposed revision to its State Implementation Plan (SIP). The State's submittal consisted of a revised State regulation entitled *Sulfur in Fuels* (Subchapter 9 of Chapter 27, Title 7, New Jersey Administrative Code (N.J.A.C. 7:27–9.1 *et seq.*)) and an Order of Adoption signed by the Commissioner of the New Jersey Department of Environmental Protection (NJDEP).

The proposed SIP revision changed Subchapter 9 in the following manner:

1. There are additions, deletions and changes to the definitions appearing in Section 9.1.

2. The provisions of Section 9.2, "Commercial Fuel Oil," and Section 9.3, "Noncommercial Fuel," have been combined into a new Section 9.2 entitled, "Sulfur Content Standards." The major change to the provisions of these sections involves applicable fuel oil sulfur content limitations:

a. In Atlantic, Cape May, Cumberland and Ocean Counties the previous sulfur content limitations of 0.7 percent for No. 4 fuel oil and 1.0 percent for No. 5 and heavier fuel oils have all been changed to 2.0 percent.

b. In Salem County the previous sulfur content limitations of 0.2 percent for No. 2 and lighter fuel oils and 0.3 percent for No. 4 and heavier fuel oils have been changed to: 0.3 percent for No. 2 and lighter fuel oils; 0.7 percent for No. 4 fuel oil; and 1.0 percent for No. 5 and heavier fuel oils.

c. In portions of Burlington, Camden, Gloucester and Mercer Counties not designated as a part of the pine barrens the previous sulfur content limitation of 0.3 percent for No. 5 and heavier fuel oils has been changed to 0.5 percent.

3. Section 9.4, "Exemptions," is now codified as Section 9.3. Among other minor changes to this section is one which permits the State to set more stringent sulfur limitations than would otherwise apply to sources of air pollution which experience aerodynamic downwash at their stacks.

4. Section 9.5 which permitted the State to grant temporary variances from applicable sulfur limitations to sources in Salem, Cumberland and parts of Cape May County has been deleted.

This request by New Jersey was the product of the State's participation in a multi-state effort involving New Jersey, Pennsylvania and Delaware to provide for attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide in the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR) and to resolve regulatory inequities among the various jurisdictions in the AQCR.

Since 1974 sources in the New Jersey portion of the Metropolitan Philadelphia AQCR have been subject to a sulfur content limit of 0.3 percent in heavy fuel oils and 0.2 percent in light fuel oils while sources in the Pennsylvania jurisdictions on the western bank of the Delaware River were subject to less restrictive limitations.

Initial attempts by the involved parties to resolve the inequities met with failure, and in January 1976, while two regional studies were being conducted, Governor Byrne issued an Executive Order calling for immediate steps to modify the sulfur-in-fuel-oil standards in South Jersey where it was possible to do so without jeopardizing State or federal air quality standards. After technical studies indicated no likelihood for contravention of the standards existed and after a network of air quality monitors was established, variances were issued by the State and approved as SIP revisions by EPA for industrial plants in Salem and Cumberland Counties and for Atlantic City Electric's B. L. England Generating Station in Cape May County. These variances were renewed several times by the State and EPA. The action now being undertaken provides permanent sulfur-in-fuel-oil limitations for the sources that had previously been granted such variances. These variances are repealed and replaced by the revised permanent sulfur-in-fuel-oil limitations put forth in this notice as of June 4, 1979.

In April of 1978, Pennsylvania had completed proposed sulfur dioxide regulatory changes for southeastern Pennsylvania. A Memorandum of Agreement was entered into by NJDEP, EPA Region II, and EPA Region III which set forth a commitment by the parties to process these regulatory changes in accordance with an agreed upon schedule. The amended regulations were submitted to EPA as a revision to Pennsylvania's SIP. The complementary New Jersey proposal was drafted, reviewed in public hearing on July 13, 1978, and submitted to EPA as a SIP revision on August 10, 1978.

EPA has found in its review of the technical information generated under an EPA funded contract and the technical information submitted by the State that this proposed SIP revision for New Jersey will not result in the contravention of any applicable air quality standard or Prevention of Significant Deterioration (PSD) increment (established pursuant to Section 163 of the Clean Air Act, as amended). However, the technical analyses submitted are predicted on the assumption that two power generating facilities located in the Metropolitan Philadelphia Interstate AQCR continue to burn fuel oil rather than coal. Under an existing New Jersey regulation, *Sulfur in Coal* (N.J.A.C. 7:27–10.1 *et seq.*), these two oil burning facilities, the Atlantic City Electric Company's Deepwater facility in Salem County and the Public Service Electric and Gas Company's Burlington facility in Burlington County, could convert to bituminous coal with a sulfur content of up to 1.0 percent, by weight (or up to 1.5 percent, by weight, if granted a variance by the State). The technical demonstration of the air quality impact of this proposed revision to *Sulfur in Fuels* did not include a consideration of the potential effect of these coal conversions. Section 110 of the Clean Air Act requires that implementation plans or revisions thereto not be approved by EPA in the absence of an adequate technical demonstration that such plans or plan revisions provide for attainment and maintenance of air quality standards, and PSD regulations in Part 51 of Title 40 of the Code of Federal Regulations require that implementation plans or revisions thereto which are shown to cause any PSD increment to be exceeded not be approved by EPA. EPA is therefore conditioning its approval of this proposed revision on the assurance that, if the necessity is demonstrated by a mandatory air quality analysis, "offsetting" emission reductions will be required to accompany the coal conversions mentioned, should they be undertaken.

EPA is therefore promulgating a provision that the State be required to submit to EPA for review an analysis of the air quality impact of any conversion to coal at the Atlantic City Electric Company's Deepwater Generating Station in Salem County or the Public Service Electric and Gas Company's Burlington Generating Station in Burlington County prior to issuance of a State permit authorizing such conversions. Upon a finding by EPA that the conversion to coal, at the sulfur-in-coal limit specified in the proposed permit, will not result in the contravention of air quality standards and will not cause PSD increments to be exceeded, the State permit may be granted. Should EPA find that the conversion will result in the contravention of standards or PSD increments, the State permit may not be granted, and the conversion may not occur until an emission reduction strategy that will correct this condition has been submitted by the State and approved by EPA as a revision to the SIP. A similar procedure must be followed if the State wishes to allow an increase in the permitted sulfur-in-coal limitation subsequent to an initial conversion.

It must be emphasized that this procedure is not meant to give EPA the right to veto any proposed fuel conversion. It merely ensures that the State and EPA have an opportunity to take a "second look" at the adequacy of the State's control strategy as regards sulfur-in-fuel-oil limitations if one or

both of the referenced potential coal conversions is to take place. If the conversion can be accommodated within the existing strategy, it may take place without further action. If not, appropriate revisions to the strategy (to be initiated by the State) must occur prior to the conversion being permitted.

The proposal for revisions to the SIP was announced in the **Federal Register** on December 27, 1978 at 43 FR 60303. In that notice, EPA advised the public that comments would be accepted as to whether the proposed revisions to the New Jersey State Implementation Plan should be approved or disapproved.

Comments were received from three parties, E. I. du Pont de Nemours and Company, Anchor Hocking Corporation, and Thomas W. Sharpless, Ph. D. of the University of Hartford Chemistry Department.

I. *Du Pont comments and EPA response.* The comments from E. I. du Pont de Nemours and Company were contained in a January 23, 1979 letter to EPA. Basically, three comments were made, all of which related to the proposed regulation pertaining to EPA's action on potential coal conversions. The first comment was that a modeling demonstration of the ambient air quality impact of a coal conversion at boilers 7 and 9 of the Atlantic City Electric Company's Deepwater Generating Station which is currently being applied for should not be required. This comment was based on the premise that modeling studies already conducted have shown a deminimus impact from conversion and have shown no interference with attainment or maintenance of air quality standards. The second comment was that EPA should not be requiring an assessment of the consumption of PSD increments that results from coal conversion at boilers 7 and 9 as part of the coal conversion review procedure. Du Pont points out that the conversion being applied for at present is to 1.0 percent sulfur coal which is claimed to produce the same quality of sulfur dioxide emissions as does the currently used 1.5 percent sulfur oil. It also is claimed that the requirement for PSD review of these conversions to coal runs contrary to PSD regulations and to the Clean Air Act. The last comment offered by du Pont was that EPA had no basis for requiring "offsetting" emission reductions in connection with converting Deepwater boilers 7 and 9 to coal.

The response to the first comment that no modeling study of the impact of conversion at Deepwater should be required because this has already been accomplished in existing modeling studies is that the State is free to submit any previously prepared modeling analysis of ambient air quality impact if such an analysis is predicated on the emission inventory at the time at which the conversion is applied for and is acceptable from a technical standpoint. It should not be inferred that EPA is necessarily requiring a new analysis.

The response to the comment regarding PSD increment consumption must begin with a summary restatement of the fundamental concept underlying the requirement for review of coal conversions as embodied in the proposed rulemaking notice. It was precisely because the air quality impact analysis of the proposed sulfur-in-fuel-oil limitations for New Jersey and Pennsylvania did not address the possible scenario of coal conversions at the Deepwater or Burlington Generating Stations that this approval had to be proposed on the condition that subsequent analyses of the air quality impact of these two potential coal conversions be performed as a basis for granting or denying permits for such conversions. Such analyses would become part of the overall air quality impact analysis of the sulfur-in-fuel-oil SIP revision at such time in the future as they might become necessary. Any SIP revision must be shown not to interfere with attainment or maintenance of air quality standards and not to cause contravention of any PSD increment. Consequently, EPA indicated in the proposed rulemaking notice that, if applied for, the referenced potential coal conversions would be subject to review for their impact on attainment or maintenance of air quality standards and on all PSD increments.

The issues raised by du Pont were: (1) That an air quality impact analysis to determine PSD increment consumption from a coal conversion at the Deepwater Generating Station should not be required since the emissions from the 1.0 percent sulfur coal being applied for would not exceed the plants actual emissions as of August 7, 1977; (2) that PSD regulations can be properly interpreted as excluding from PSD increment consumption any emission increase from such a coal conversion; and (3) that emission increases due to fuel switches do not consume PSD increment under the Clean Air Act. EPA is fundamental disagreement with the last of these contentions. In *Alabama Power Company v. EPA*, No. 78–1006 (D.C. Cir.), a case currently before the U.S. Court of Appeals for the District of Columbia Circuit, the EPA has stated its position that fuel switches of the kind applied for at Deepwater consume PSD increment. EPA's argument appears in its brief in the case. Since the issue is now being litigated, a final response to du Pont's assertion that fuel switches do not consumer PSD increment under the PSD provisions of the Clean Air Act is best left to the court.

EPA also disagrees with Dupont's second assertion that under PSD regulations emissions from a fuel switch at the Deepwaterr Generating Station would be included in the PSD emissions baseline as would be certain emissions from SIP relaxations pending before EPA on August 7, 1977. The *Alabama Power Company* case (cited above) will also address this issue.

EPA's decision in this rulemaking neither disputes nor adopts Dupont's first point, that a conversion at Deepwater would result in no increase in emissions over the plant's actual emissions on August 7, 1977. If this assertion is correct, then no portion of the increment will be consumed, and Dupont's concern will not arise.

In any case, conversion to coal at the Deepwater or the Burlington Station would not be subject to PSD permitting requirements under EPA regulations.

In response to du Pont's third comment regarding emission "offsets," it is pointed out that the use of the phrase, " 'offsetting' emission reductions," in the proposed rulemaking notice did not mean that EPA intends to bring its December 21, 1976 Interpretive Ruling regarding emission offsets to accomodate growth in nonattainment areas to bear on these potential coal conversions. It is recognized that all of New Jersey is designated as being in attainment of sulfur dioxide standards, and the offset policy applies only to nonattainment areas. The point that was made in the proposed rulemaking notice was simply that if the technical analysis of the air quality impact of coal conversion were to indicate interference with attainment or maintenance of air quality standards or contravention of a PSD increment, then the State would not be permitted to issue a permit authorizing the conversion, and the conversion could not occur until an emission reduction strategy that would correct this condition had been submitted by the State and approved by EPA as a revision to the SIP. The emission reductions effected by such strategy would be the "necessary 'offsetting' emission reductions" referred to in the proposed rulemaking notice.

II. *Anchor Hocking comments and EPA response.* Anchor Hocking commented on the proposed rulemaking notice in a January 23, 1979 letter to EPA by making reference to its earlier

testimony submitted at the State's public hearing on July 13, 1978 and its follow-up correspondence with the New Jersey Department of Environmental Protection, dated July 18, 1978. These comments relate to a change Anchor Hocking proposed to the boundary between two of the regions which were defined in the State's *Sulfur in Fuels* regulation and which were therein designated for specific sulfur-in-fuel-oil limitations.

The proper role for EPA with respect to state-initiated SIP revisions, as put forth in the Clean Air Act, is to evaluate the States' proposed revisions and to make determinations as to their approvability. As such the possibility that another boundary which would be more favorable to a particular involved party might also be acceptable is not an issue of concern to EPA in its review of New Jersey's proposal. The company's position was appropriately brought to the attention of the State which apparently rejected it.

III. *Comments from Dr. Sharpless and EPA response.* Thomas Sharpless, Ph.D. of the University of Hartford Chemistry Department made two comments in a January 10, 1979 letter to EPA. His first comment was that the increased sulfur content of fuel oil allowed under this revision would result in increased formation of particulate sulfates and would probably interfere with Connecticut's efforts to attain and maintain ambient air quality standards for total suspended particulates. His second comment was that if the higher sulfur content fuels allowed under the revision were subjected to the common methods for sulfur content reduction, the result would be fuel that burns with less production of fly ash.

In response to the first comment, it must be pointed out that EPA does not currently have a policy or regulation covering secondary particulate formation. Secondary sulfates and other fine particulates are currently under intensive study by EPA, and regulatory tools to deal with the problem are expected to be developed in the future. In particular, EPA is currently developing a fine particulates ambient air quality standard. Until these problems are clearly understood, and appropriate regulatory tools are available, EPA has no legal basis to disapprove SIP revisions on the basis of sulfate formation. Application of existing analytical methodology does not indicate interference with attainment or maintenance of air quality standards as a result of this SIP revision.

In response to the second comment offered by Dr. Sharpless, EPA can only point out that the existing limitations for particulate matter emissions from oil burning power stations are not being changed as a result of this particular SIP revision and will remain enforceable by the State and by EPA. These existing limitations have been satisfactorily demonstrated to provide for attainment and maintenance of air quality standards.

In view of the preceding discussion concerning the air quality impact of the revised *Sulfur in Fuels* regulation and the necessity of the review and approval/disapproval procedure for the referenced potential coal conversions, EPA has determined that the proposed revisions need not be modified as the result of comments received. EPA finds these revisions to the New Jersey State Implementation Plan consistent with the requirements of Section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves these revisions.

Futhermore, this action is being made effective immediately because the sulfur-in-fuel-oil limitation revisions impose no hardship on the affected sources, and the review procedure for coal conversions is needed immediately in order to protect the new sulfur-in-fuel-oil control strategy.

(Sec. 110, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

Dated: May 24, 1979.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 paragraph (c) is amended by adding a new subparagraph (20) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(20) A revision submitted by the New Jersey Department of Environmental Protection on August 10, 1978 consisting of amendments to the provisions of the New Jersey Administrative Code (N.J.A.C.) 7:27–9.1 *et seq., Sulfur in Fuels,* and accompanying supplemental information.

2. Section 52.1601 is amended by adding a new paragraph (b) as follows:

§ 52.1601 Control strategy and regulations: Sulfur oxides.

* * * * *

(b) Before any steam or electric power generating facility in Zone 3, as defined in N.J.A.C. 7:27–10.1, burning fuel oil on (the date of publication of EPA's final action on this revision request), having a rated hourly gross heat input greater than 200,000,000 British Thermal Units (BTU's), and capable of burning coal without major reconstruction or construction, which facility was in operation prior to May 6, 1968, or group of such facilities having a combined rated hourly capacity greater than 450,000,000 BTU's may be permitted by the State to convert to the use of coal, the State shall submit to EPA a copy of the proposed permit together with an air quality analysis employing methodology acceptable to EPA. If EPA determines, on the basis of the submitted analysis, that the proposed coal conversion will not interfere with the attainment or maintenance of air quality standards and will not be the cause for any Prevention of Significant Deterioration (PSD) increment to be exceeded, then the permit authorizing conversion may become effective immediately upon the publication of such a determination (as a Notice) in the **Federal Register.** If EPA determines that the submitted analysis is inadequate or that it shows that the proposed conversion will interfere with attainment or maintenance of air quality standards or cause any PSD increment to be exceeded, then EPA shall so inform the State of its determination, and the permit authorizing conversion shall not become effective and conversion shall not occur until an adequate analysis is submitted or, if necessary, until a control strategy revision which would require any necessary emission reductions is submitted by the State and placed into effect as an EPA approved revision to the implementation plan. In addition, this same procedure shall apply to any State permit applied for that would authorize a relaxation in the sulfur-in-coal limitation at any such facility, as defined above in this paragraph, having already been granted a permit to convert to coal.

(Sec. 110, 301, Clean Air Act, as amended (42 U.S.C., 7410, 7601).)

[FR Doc. 79-17269 Filed 6-1-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1238-8]

Approval and Promulgation of Implementation Plans; Approval of Revisions of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: Pennsylvania State Implementation Plan (SIP) limitations on the sulfur content of fuels burned in southeastern Pennsylvania are revised by this final rulemaking. These revisions have been adopted in order to attain and maintain the air quality standards for sulfur dioxide and to resolve regulatory inequities among the various jurisdictions in the Philadelphia metropolitan area.

EFFECTIVE DATE: June 4, 1979.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Ms. Patricia Sheridan.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality & Noise Control, Third and Fulton Streets, Harrisburg, Pennsylvania 17120, ATTN: Mr. Gary Triplett.

Philadelphia Air Management Services, 301 Arch Street, Philadelphia, Pennsylvania 19106, ATTN: Mr. William Reilly.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond D. Chalmers (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1978 the Commonwealth of Pennsylvania submitted to the Regional Administrator, EPA Region III, an amendment to Title 3 of the Philadelphia Code relating to Air Management and an amendment to Title 25 of the Pennsylvania Code relating to Environmental Resources. The Commonwealth requested that these amendments be reviewed and processed as revisions of the Pennsylvania State Implementation Plan for the attainment and maintenance of National Ambient Air Quality Standards.

The amendments consist of changes to Title 3, Section 3-207 (Sale of Fuel Oil) of the Philadelphia Code pertaining to Philadelphia County and changes to Title 25, Part I, Subpart C, Article III, Chapter 121 (Definitions) and Chapter 123 (Standards for Contaminants, Sulfur Compound Emissions) of the Pennsylvania Code pertaining to Bucks, Chester, Delaware, and Montgomery Counties.

The amendments implement the Pennsylvania portion of a regional strategy to attain and maintain the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in the Metropolitan Philadelphia Interstate Air Quality Control Region (MPIAQCR). This strategy was developed over the past two years through the joint efforts of the air pollution control agencies of New Jersey, Pennsylvania, Philadelphia, and Delaware.

The amendments establish two regulatory zones in the Pennsylvania portion of the MPIAQCR: An inner zone consisting of Philadelphia County and portions of Bucks, Delaware, and Montgomery Counties adjacent to Philadelphia County and an outer zone consisting of Chester County and the portions of Bucks, Delaware, and Montgomery Counties not included in the inner zone. Residual oil and distillate oil used in the inner zone is limited to 0.5 percent and 0.2 percent sulfur content by weight, respectively; residual oil and distillate oil used in the outer zone is limited to 1.0 and 0.3 percent sulfur content by weight, respectively. Emissions of SO_2 from combustion of non-commercial fuels and coal are limited to 1.2 pounds per million BTU of heat input in the outer zone and 0.6 pounds per million BTU of heat input in the inner zone except in Philadelphia where coal burned is limited to 0.3 percent sulfur by weight and where the concentration of emissions from combustion of non-commercial fuel is limited to 250 parts per million on an annual average.

II. Public Comments/EPA Response

Scott Paper Company submitted comments urging the disapproval of the revision. Scott submitted the testimony of Gardner Cox, made on behalf of the Penjerdel Corporation at the public hearing held by Pennsylvania on June 9, 1978, Scott Paper Company's appeal for the regulations to be voided, and Scott's petition for Supersedeas in the same case. Scott argued that Pennsylvania's SO_2 regulation changes for the MPIAQCR were contrary to law, unsupported by substantial evidence, and were arbitrary and capricious. The principal basis for these arguments was that "by tightening the SO_2 standards applicable to surburban counties located in the inner zone, the regulation inequitably imposes a substantial burden on that area without resulting in any significant environmental benefit for the community." Scott also argued that EPA should disapprove the revision because of an alleged failure of the Commonwealth of Pennsylvania on June 9, 1978 to provide a meaningful public hearing as required by both Pennsylvania law and the Federal Clean Air Act. In May of 1978, EPA Regions II and III and the State of New Jersey signed a Memorandum of Agreement which, in consideration of the forbearance of the State of New Jersey in bringing an environmental action against EPA and the Commonwealth of Pennsylvania, required EPA Region III to enforce existing SIP limitations on sulfur-in-fuel in Philadelphia if Pennsylvania failed to adopt revised sulfur-in-fuel limitations. Scott argued that the practical effect of the memorandum was to preclude the Pennsylvania Department of Environmental Resources from giving adequate and impartial consideration to the public comments made at the public hearing.

EPA has determined that most of Scott's comments do not bear on the issues the agency is permitted to consider under Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51 when determining whether or not to approve a SIP revision requested by a State government. The only relevant argument for the revision's disapproval that Scott made was the allegation that Pennsylvania had failed to hold an adequate public hearing before adopting the SO_2 amendments. EPA has determined that Pennsylvania did hold an adequate public hearing. A document prepared by the State after the public hearing entitled, "Summary of Comments on Proposed SO_2 Regulation Revisions for Southeastern Pennsylvania and Department of Environmental Resources' Response to Negative Comments" clearly shows that the State adequately considered all public comments. Therefore, EPA finds that disapproval of this revision is not warranted on the basis of the comments made by Scott Paper Company.

III. Administrator's Decision

The Administrator has determined that revising the Pennsylvania SIP to include the amendments for control of SO_2 submitted by the State will cause the MPIAQCR to be brought into compliance with NAAQS for sulfur

dioxide. He also found that the revisions conform with all the criteria of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

In view of the above evaluation, the Administrator approves the above-mentioned amendments to Section 3–207 (Sale of Fuel Oil) of the Philadelphia Code and to Title 25, Part I, Subpart C, Article III, Chapter 121 (Definitions) and Chapter 123 (Standards for Contaminants, Sulfur Compound Emissions) of the Pennsylvania Code pertaining to Bucks, Chester, Delaware, and Montgomery Counties. Concurrently, 40 CFR 52.2020 (Identification of Plan) is amended to incorporate these amendments into the federally-approved Pennsylvania State Implementation Plan.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401 et seq.)

Dated: May 24, 1979.

Douglas M. Costle,

Administrator.

Part 52 of Title 40 of Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. In § 52.2020 Identification of Plan, paragraph (c)(18) is added to read as follows:

§ 52.2020 Identification of Plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified * * *

(18) Amendments to Title 3, Section 3–207 (Sale of Fuel Oil) of the Philadelphia Code pertaining to Philadelphia County and to Title 25, Part I, Subpart C, Article III, Chapter 121 (Definitions) and Chapter 123 (Standards for Contaminants, Sulfur Compound Emissions) of the Pennsylvania Code pertaining to Bucks, Chester, Delaware, and Montgomery Counties submitted on July 31, 1978 by the Governor.

[FR Doc. 79–17270 Filed 6–1–79; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

45 CFR Part 5a

Availability of Information to the Public Pursuant to Executive Order 11652 and National Security Council Directive of May 17, 1972

AGENCY: Office of the Secretary, HEW.

ACTION: Deletion of obsolete regulation; notice of availability of interim DHEW Security Manual.

SUMMARY: The Department is deleting outdated regulations at 45 CFR Part 5a. 45 CFR Part 5a currently contains regulations on the Department's classification and declassification of national security information. These regulations implemented Executive Order 11652 (37 FR 5209, March 10, 1972), entitled "Classification and Declassification of National Security Information and Materials", as well as the National Security Council directive of May 17, 1972 (37 FR 11053). These documents have been superseded by Executive Order 12065 (43 FR 28949, June 28, 1978) and by the Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978). The Department plans to issue new regulations implementing the new Executive Order and Oversight Office Directive in the near future. Simultaneous with the deletion of the regulation, the Department gives notice of the availability to the public of an interim Security Manual revised pursuant to Executive Order 12065. These new interim manual provisions were published by the Department on January 8, 1979 and superseded all previously issued guidance except Parts 2 and 5 of the presently published HEW Security Manual.

EFFECTIVE DATE: June 4, 1979.

ADDRESS: For review of the manual contact Mr. Kenneth E. Lopez, Chief, OS Security and Safety Office, Department of Health, Education and Welfare, Room 4315, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245–6566.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Lopez, Chief, OS Security and Safety Office, Department of Health, Education and Welfare, Room 4315, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, (202) 245–6566.

SUPPLEMENTARY INFORMATION:

PART 5a [DELETED]

Accordingly, Part 5a is deleted from 45 CFR Subtitle A.

Dated: April 21, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

Approved: May 18, 1979.

Joseph A. Califano, Jr.,

Secretary.

[FR Doc. 79–17290 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–12–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility Guidelines; Correction

AGENCY: Legal Services Corporation.

ACTION: Final Rule—Correction.

SUMMARY: On May 15, 1979 (44 Fed. Reg. 28329 (May 15, 1979)) the Legal Services Corporation published revised eligibility guidelines for its grantees based on one-hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget (44 Fed. Reg. 26745–46 (May 7, 1979)). Eligibility for legal services should be determined using only the figures published for non-farm families. The figures for farm families were inadvertently included in the Legal Services Corporation guidelines and should not be considered in determining eligibility.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Barbara Allen, Legal Services Corporation, 733 15th Street, N.W., Suite 700, Washington, D.C. 20005, 202–376–5113.

Stephen S. Walters,

Acting General Counsel, Legal Services Corporation.

[FR Doc. 79–17249 Filed 6–1–79; 8:45 am]

BILLING CODE 6820–35–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

Parts and Accessories Necessary for Safe Operation to Resolve Inconsistencies Between the FMCSR and the FMVSS

Correction

In FR Doc. 79–13436 appearing on page 25456 in the issue of Tuesday, May

1, 1979, the table appearing in § 393.60(a)(2) should have appeared as follows:

Vehicles Manufactured	Must Comply With			
	§ 26.1-1950	§ 26.1a-1964 As Supplemented By	§ 26.1-1950 As Supplemented By § 26.1a-1969	§ 26.1-1966 As Supplemented By
Before January 1, 1966	X			
From January 1, 1966 to December 31, 1980		X		
On And After January 1, 1981				X

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[S.O. 1288, Amdt. 3]

Car Service; Chicago North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul Pacific Railroad Co. at De Kalb, Ill.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 3 to Service Order No. 1288.

SUMMARY: Service Order No. 1288 authorizes the Chicago and North Western Transportation Company (CNW) to operate over tracks of the MILW in De Kalb for the purpose of providing continued rail service to those shippers.

DATES: Effective 11:59 p.m., May 31, 1979, and continuing until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

Decided: May 25, 1979.

Upon further consideration of Service Order No. 1288 (42 FR 62925; 43 FR 24539 and 56673), and good cause appearing therefor:

It is ordered: § *1033.1288 Service Order No. 1288* (Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company at De Kalb, Illinois) is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126))

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17275 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. 1289, Amdt. 3]

Car Service; Burlington Northern, Inc. Authorized To Operate Over Tracks of Union Pacific Railroad Co. at Sterling, Colo.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 3 to Service Order No. 1289.

SUMMARY: Between Sterling, Colorado, and Union, Colorado, Burlington Northern (BN) trains operate over tracks of the Union Pacific (UP). The connection between the BN and the UP at Sterling includes a 13 degree curve which imposes severe speed restrictions, reduced train size, and excessive fuel consumption.

DATES: Effective 11:59 p.m., May 31, 1979, and continuing until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, (202) 275-7840.

Decided: May 25, 1979.

Upon further consideration of Service Order No. 1289 (42 FR 63423; 43 FR 24694 and 56671), and good cause appearing therefor:

It is ordered: § *1033.1289 Service Order No. 1289* (Burlington Northern Inc. authorized to operate over tracks of Union Pacific Railroad Company at Sterling, Colorado) is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17276 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. 1361, Amdt. 1]

Car Service; Substitution of Trailers for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 1 to Service Order No. 1361.

SUMMARY: Service Order No. 1361 authorizes The Atchison, Topeka and Santa Fe Railway Company (ATSF) to substitute two trailers for each boxcar ordered on shipments of paper from Houston, Texas, to Cincinnati, Ohio.

DATES: Effective 11:59 p.m., May 31, 1979, and continuing until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, (202) 275-7840.

Decided: May 25, 1979.

Upon further consideration of Service Order No. 1361 (44 FR 7504), and good cause appearing therefor:

It is ordered: § *1033.1361 Service Order No. 1361* Substitution of Trailers for Boxcars is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1979.

(49 U.S.C. (10304–10305 and 11121–11126).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17277 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1033

[Rev. S.O. 1280, Amdt. 3]

Car Service; Substitution of Hopper Cars for Covered Hopper Cars or Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 3 to Revised Service Order No. 1280.

SUMMARY: Because of severe shortages of cars certain railroads are unable to furnish sufficient covered hopper cars and boxcars required for loading grain and grain products. Some railroads have available supplies of open hopper cars which can be substituted for boxcars or covered hopper cars for transporting these shipments. This Order authorizes railroads to substitute open hopper cars for covered hopper cars or boxcars.

DATES: Effective 11:59 p.m., May 31, 1979, and continuing until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, (202) 275–7840.

Decided: May 25, 1979.

Upon further consideration of Revised Service Order No. 1280 (42 FR 59386; 43 FR 23723 and 56675), and good cause appearing therefor:

It is ordered: § *1033.1280 Revised Service Order No. 1280* (Substitution of Hopper Cars for Covered Hopper Cars or Boxcars) is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 31, 1979.

(49 U.S.C. (10304–10305 and 11121–11126))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17274 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Salmon Fishery; Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Emergency regulations.

SUMMARY: This document extends the emergency regulations which appeared in the **Federal Register** on April 25, 1979 (44 FR 24291) for the Commercial and Recreational Salmon Fisheries Off the Coast of Washington, Oregon and California for 45 days from 0001 P.d.t., June 4, 1979, to 2400 P.d.t., July 18, 1979. The emergency situation described in the initial **Federal Register** publication continues to exist.

EFFECTIVE DATES: June 4, 1979 to July 18, 1979 unless sooner terminated.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Johnson, Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109, Telephone: (206) 442–7575.

SUPPLEMENTARY INFORMATION: On April 25, 1979, the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, promulgated emergency regulations to implement an amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon and California prepared by the Pacific Fishery Management Council and approved by the Assistant Administrator. The Assistant Administrator has determined that the current emergency regulations must be continued for a 45-day period as authorized by section 305(e)(2) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265; 16 U.S.C. 1801–1882).

Therefore the emergency regulations adopted on April 25, 1979 are continued in effect from 0001 hours Pacific daylight saving time June 4, 1979 to 2400 hours P.d.t., July 18, 1979, unless sooner amended or terminated by appropriate action and public notice.

Signed this 29th day of May, 1979, at Washington, D.C.

(16 U.S.C. 1801 *et seq.*)

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17162 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 108
Monday, June 4, 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 THE TREASURY

Comptroller of the Currency

[12 CFR Part 11]

Securities Exchange Act; Disclosure Rules

AGENCY: Comptroller of the Currency.

ACTION: Proposed Amendments.

SUMMARY: This document would amend the Securities Exchange Act Disclosure Rules (12 CFR Part 11) in order that these regulations will be substantially similar to comparable rules and regulations issued by the Securities and Exchange Commission ("SEC"). Under the Securities Exchange Act of 1934 ("the 1934 Act"), changes made by the SEC in its relevant rules and regulations must also be made by the Comptroller of the Currency ("Comptroller") in the Securities Exchange Act Disclosure Rules, unless the Comptroller finds that such rules are not appropriate for the protection of investors nor in the public interest, and such findings are published in the Federal Register. The proposed amendments are in the areas of management remuneration, corporate governance, beneficial ownership, changes in independent accountants, services and fees of independent auditors, and simplification of Part 11. The amendments are intended to: assure that the disclosure requirements will cover all persons who function as key, policymaking members of management; improve the information available to shareholders; expand the definition of "beneficial owner"; require disclosure of recommended decisions relating to independent accountants; and require disclosure relating to services and fees of independent auditors. The proposed simplification of Part 11 is intended to result in a shorter, more readable regulation that will reduce costs to banks and other filing persons.

DATE: Written comments must be received on or before August 3, 1979.

ADDRESS: Written comments should be addressed to John E. Shockey, Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT. Ralph Janvey, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, D.C. 20219, at (202) 447–1954.

SUPPLEMENTARY INFORMATION: The major proposed amendments to Part 11 are discussed below:

I. Proposed Amendments to Securities Exchange Act Disclosure Rules

A. Management Remuneration

The Comptroller, in response to recent Securites and Exchange Commission ("SEC") amendments, is proposing to amend Item 7 of the proxy rules, (12 CFR § 11.51), Remuneration and Other Transactions with Management, to be substantially similar to regulations adopted by the SEC in Release Nos. 34–15006 (41 FR 34402) and 34–15380 (43 FR 58181). Also, the Comptroller proposes to amend Item 10 of Form F–1, Registration Statement (12 CFR § 11.41), Remuneration of Directors and Officers, and Item 13 of Form F–1, Interest of Management and Others in Certain Transactions, by combining the two items into a new Item 10, the requirements of which are cross-referenced to Item 7 of the proxy rules.

Introduction. The SEC amendments to management remuneration are based upon the following: (1) the SEC observed that management remuneration packages have become more diverse and complex, and, as a result, many forms of remuneration were being disclosed through narrative discussion in footnotes to the table presently required by Item 7 of the proxy rules, rather than in the table itself. Believing that this type of disclosure can obscure the total remuneration actually received by management, the SEC amended the table to assure that all remuneration which can be quantified and related to services performed will be included in the table; (2) the recent SEC's Corporate Governance Hearings at which a number of commentators testified that, in order to properly assess the performance of management, a shareholder must be more fully informed about a corporation's management, including their remuneration; and (3) the recent public discussion and debate over perquisites. Concerning point (3), the Comptroller on March 13, 1978, sent to all national banks, Banking Bulletin No. 78–3 entitled "Disclosure concerning remuneration payments to officers and directors," which indicated that the Comptroller would carefully consider guidelines ultimately adopted by the SEC.

Summary of Proposed Amendments by the Comptroller. (1) Item 7(a) of the proxy rules would be amended to increase from three (3) to five (5) the minumum number of persons for whom disclosure would be required and to raise the disclosure threshold from $40,000 to $50,000. The purpose of raising the minumum number of persons to five is to asssure that the disclosure requirements will cover all persons who function as key, policy-making members of management. The dollar amount was raised to $50,000 in recognition of the inflationary effect on remuneration. The Comptroller specifically requests comments on this proposed amendment and whether the current requirements of three (3) persons and $40,000 should be retained.

(2) The table presently set forth in Item 7 of the proxy rules would be expanded to include five columns. The instructions to the various columns have been simplified and modified (from the SEC's version) in order to more accurately reflect the types of remuneration common to national banks. (a) Columns A and B require information as to the name of the individual or the number of persons in the group and the capacities in which such person served during the year, which follows the approach set forth in present Item 7(a). (b) Column C, which presently requires disclosure of Aggregate Direct Remuneration, would be divided into Columns C1 and C2. Column C1 would include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses. Column C2 would include cash or cash-equivalent remuneration attributable to securities or property, insurance benefits, and personal benefits. Personal benefits would be valued on the basis of aggregate actual cost to the bank. However, no dollar disclosure of personal benefits to a specified person would be required if the aggregate amount of all personal benefits to such

person did not exceed $5,000. Also, a bank would be required to describe, in a statement following the table, its policies, practices and the type of benefits provided to officers, directors or principal shareholders. (c) A new Column D would require disclosure of contingent forms of remuneration. New Instruction 3 to Item 7(a) discusses in detail the types of remuneration which may be of a contingent nature and thus reportable under Column D.

(3) Items 7(e) and 7(f) of the proxy rules would be relabelled Items 7(d) and 7(e) respectively, and amended to simplify and clarify the disclosure required for indebtedness of, and transactions with, management. An attempt was made, in drafting the amendments to these particular items, to fashion disclosure requirements that are most informative to shareholders of national banks, and to clarify areas of ambiguity which have arisen concerning the interpretation of the existing regulations.

B. Corporate Governance

The Comptroller, in response to recent SEC amendments, is proposing amendments to its proxy rules and related forms. (See release No. 34–15384 (December 6, 1978), 43 FR 58522). The proposals are intended to improve the information available to shareholders regarding: (1) the structure, composition and function of a bank's board of directors'; (2) resignations of directors; (3) attendance of directors at board and committee meetings; and (4) the terms of proxy contest settlements. Shareholders making proposals for inclusion in the bank's proxy materials would be afforded an opportunity to review the accuracy of management statements in opposition to the shareholder's proposals prior to the mailing of the proxy materials.

The proposed amendments respond to action flowing from a broad re-examination by the SEC of its rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. For a discussion of the SEC study and public hearings, see Release Nos. 34–13482 (April 28, 1977), 42 FR 23901 and 34–14970 (July 18, 1978), 43 FR 31945.

The following is a summary of the major proposals: (1) Proposed amendments to 12 CFR § 11.5(k) would require that where management intends to include in its proxy statement a statement in opposition to a shareholder's proposal, management must, within prescribed time periods, promptly forward a copy of its statement to the shareholder. If the shareholder believes that the statement is false or misleading, the shareholder may send the Comptroller a letter, forwarding a copy to the bank, setting forth his reasons as to the alleged false statements or omissions. (2) Form F–3, Current Report, of 12 CFR § 11.43 and Item 6, Nominees and Directors, of the proxy rules would be amended by adding a new Item 6, Resignations of Bank Directors. Proposed Item 6 would require that if a director has resigned or declined to stand for reelection because of a disagreement with management on any matter relating to a bank's operations, policies or practices, and the director has furnished a letter to the bank disclosing the disagreement and requesting disclosure of the matter, the bank would be required to disclosue the date of the resignation or declination to stand for reelection and include a summary of the director's description of the disagreement. If the bank disagrees with the director's description it may include its own brief statement presenting its views. (3) Item 6, Submission of Matters to a Vote of Security Holders, of Quarterly Report, Form F–4, (12 CFR § 11.44) and Item 3, Persons Making the Solicitation, of the proxy rules would require disclosure by a bank of the settlement terms of an election contest, including the cost or anticipated cost to the bank. (4) Item 8, Directors and Officers, of Form F–1, and Item 6, Nominees and Directors, of the proxy rules would be amended to require disclosure of (a) The total number of meetings of the board of directors which were held during the last fiscal year. Any incumbent director who attended fewer than 75 percent of the total meetings of the board and any committees on which he served would have to be named; (b) Whether the bank has standing audit, nominating and compensation committees (or committees performing similar functions), the identity of each committee member and the number of meetings held by each committee during the last fiscal year and, if a bank has a nominating or similar committee, whether the committee will consider shareholder nominees and the procedures to be followed; (c) Any significant business relationship between a bank and a customer or supplier in which a nominee to the bank's Board of Directors owns in excess of one percent of the bank's stock, or is an officer, director or employee of that customer or supplier; and (d) Any relationship wherein a nominee to the Board of Directors or a director is a member, employee or associate of a law firm which has been retained by the bank during the last two fiscal years or is proposed to be retained.

The Comptroller specifically requests comment on requiring disclosure of attendance at board of director meetings and at standing audit, nominating and compensation committees.

C. Beneficial Ownership

The Comptroller is proposing amendments to its rules and forms pertaining to the beneficial ownership of national bank securities. The proposals would amend 12 CFR § 11.4(g), Form F–11, Acquisition Statement, (12 CFR, § 11.47) and Form F–13, Tender Offer Form, (12 CFR § 11.54). Also, the Comptroller is proposing a new Form F–11A, Short Form Ownership Statement, to be set forth in 12 CFR § 11.48.

Background. Section 13(d) of the 1934 Act was enacted in 1968 as part of the Williams Act Amendments. The legislative history indicates that Section 13(d) was intended to provide important information to the investing public and to the affected bank about rapid accumulations of the bank's equity securities by persons who would thereby have the potential to change or influence control.

In November and December 1974, the SEC conducted hearings on beneficial ownership, takeovers, and acquisitions by foreign and domestic persons. Based on its experience and and testimony received, on August 29, 1975, the SEC first proposed formal rules regarding disclosure of beneficial ownership for the purposes of Sections 13(d), and the tender offer and proxy rules. Prior to the 1975 proposals, there was no explicit definition of beneficial ownership, although a definition did exist for purposes of Section 16 of the Act.

In June 1975, Congress enacted Section 12(m) of the 1934 Act, which directed the SEC to conduct a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner (*i.e.*, street name or nominee name) to determine whether that practice was inconsistent with the purposes of Section 13(d). Pursuant to Section 12(m), the SEC in its Final Report to Congress (December 3, 1976) concluded that the practice of recording the ownership of securities in other than the name of the beneficial owner limited the amount of material information available to the public regarding beneficial owners of substantial amounts of securities.

On February 24, 1977, the SEC amended its related rules and forms, and adopted a new short form

acquisition notice for certain qualified persons. Concurrently with that action, the SEC proposed amendments to the same rules and forms. The amendments were to become effective on August 31, 1977, but as a result of interpretation problems, the effective date was delayed until April 30, 1978.

Between the adpotion and effective dates of the amendments, Congress enacted Section 13(g) as part of the Domestic and Foreign Investment Disclosure Act of 1977. This Act also amended Sections 13(d)(1) and 15(d), and added Section 13(b). Section 13(g)(1) requires any person who is directly or indirectly the beneficial owner of more than 5% of a specified equity security to send to the bank and file with the Comptroller a statement setting forth in a prescribed format certain required information about the beneficial owner and the nature of such person's interest.

The beneficial ownership rules were further amended on April 21, 1978, and additional new proposals were also published for comment. Further amendments were made by the SEC in June 1978, November 1978 and January 1979. All of the aforesaid amendments were designed to clarify previous action.

Summary of Proposals. The Comptroller, in an otherwise unrelated proposal published on March 13, 1978 (43 FR 10371), stated that amendments relating to beneficial ownership would be delayed until the SEC considered all comments on its rules and adopted a definitive version. This process having been completed in January 1979, the Comptroller is now proposing amendments to its rules and forms.

The Comptroller is proposing to amend 12 CFR § 11.4(g) to: (1) expand the definition of beneficial owner to include any person who directly or indirectly through any contract, arrangement, understanding or otherwise, has, or shares voting, power (either the power to vote or to direct the voting) or investment power (the power to dispose, or to direct the disposition, of the shares) and (2) provide a short-form acquisition notice, Form F–11A (12 CFR § 11.48), for specified persons.

Also, Forms F–11, F–11A and F–13 would require that a cover sheet, similar to that adopted by the SEC, be completed. Congress by enacting Section 13(g)(5) directed the SEC to tabulate and make available to the public the information contained in any report filed pursuant to Section 13 of the 1934 Act. While the Comptroller is not directed to perform the same compilation and tabulation, the Comptroller believes that Section 12(i) and 13(h) of the 1934 Act coupled with a fair interpretation of Section 13(g)(5), strongly suggest that the Comptroller assist the SEC in this endeavor. The obligation of completing the cover page is not on the bank, but rather on the persons or group that acquired the requisite number of securities or contemplates a tender offer for a bank's outstanding stock.

D. Changes in Independent Accountants

The Comptroller, in response to recent SEC amendments, is proposing to amend Item 4, Changes in Bank's Certifying Accountant, of Form F–3, and Item 8, Selection of Auditors, of the proxy rules, to require disclosure of whether a decision to change accountants was recommended by the audit or similar committee of the board of directors of a bank. (See Release No. 34–14808 (May 26, 1978), 43 FR 24287).

Currently Item 4 of Form F–3, requires that a national bank must report changes of its independent accountant, including the date of the change and reports of any disagreements with the former accountant. Item 8 of the proxy rules requires that a national bank identify the accountant selected for the current year and, if different from those who prepared the bank's most recently filed certified financial statements, briefly summarize the circumstances and conditions surrounding the proposed change.

E. Services and Fees of Independent Auditors

The Comptroller is proposing to amend Item 8, Selection of Auditors, of the proxy rules to require disclosure of (1) services provided during the last fiscal year by the independent auditor, the percentage relationship which the aggregate fees for all nonaudit services bear to the audit fees, and the percentage relationship that the fees for each nonaudit service bear to the audit fees; and (2) whether the Board of Directors or its audit or similar committee has approved each such service. (See Release No. 34–14904 (June 29, 1978), 43 FR 29110).

II. Advance Notice of Additional Proposed Rulemaking

Proposed Simplification of Part 11

The Comptroller specifically requests comments on the concept of simplifying and clarifying Part 11. It is contemplated that Part 11 will be rewritten into plain English with particular emphasis on eliminating confusing legal terminology. The purpose of the proposed revision is to produce a shorter, more readable and understandable regulation that will reduce the costs to banks, and other filing persons, in terms of time, paperwork and staff.

The proposed revision of the regulation would be proposed and implemented in three steps. First, the specific filing requirements would be integrated into the actual reporting formats to minimize cross-referencing. Then a principal section of the regulation, such as the proxy rules, would be rewritten. Finally, based on the experience gained from the rewritten section, the remaining sections of the regulation would be rewritten. Each step of the proposed revision will be proposed separately for public comment. It is anticipated that the proposed revisions will be coordinated with similar proposals by the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System.

In view of the fact that all national banks are required to file publicly available Call Reports on a quarterly basis, public comment is also requested as to whether the Comptroller, consistent with Sections 12(h) and (i) of the 1934 Act should, by rule, regulation or order, permit national banks to file such Call Reports in lieu of certain quarterly and annual reports and other financial statement presentations required under Section 13 of the 1934 Act and the rules and regulations promulgated thereunder by the Comptroller.

Proposed Amendments

It is proposed to amend 12 CFR Part 11 as follows:

1. 12 CFR 11.4(g)(2), (3), and (4) are revised; (g)(5), (6), and (7) are added to read as follows:

§ 11.4 Registration statements and reports.

* * * * *

(g) * * *

(2) (i) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a national or District bank of a class which is registered pursuant to Section 12 of the Act, *provided*, such term shall not include securities of a class of non-voting securities, is directly or indirectly the benefical owner of more than five percent of such class shall, within 10 days after such acquisition, send to the bank at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Comptroller of the Currency, a statement containing the information required by Form F–11. Four copies of the statement, including all

exhibits, shall be filed with the Comptroller of the Currency, one of which should be manually signed.

(ii)(A) A person who would otherwise be obligated under paragraph (i) of this section to file a statement on Form F–11 may, in lieu thereof, file with the Comptroller of the Currency within 45 days after the end of the calendar year in which such person became so obligated, four copies, including all exhibits, of a short form statement on Form F–11A and send one copy of each such form to the bank at its principal executive office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided,* That it shall not be necessary to file a Form F–11A unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent: And *provided further,* That:

(*1*) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 11.4(g)(4)(ii); and

(*2*) Such person is:

(*i*) A broker or dealer registered under Section 15 of the Act;

(*ii*) A bank as defined in Section 3(a)(6) of the Act;

(*iii*) An insurance company as defined in Section 3(a)(19) of the Act;

(*iv*) An investment company registered under Section 8 of the Investment Company Act of 1940;

(*v*) An investment adviser registered under Section 203 of the Investment Advisers Act of 1940;

(*vi*) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(*vii*) A parent holding company, provided the aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraph (g)(2)(ii)(A)(*2*)(*i*) through (*vi*) of this section, does not exceed one percent of the securities of the subject class;

(*viii*) A group, provided that all the members are persons specified in paragraph (g)(2)(ii)(A)(*2*)(*i*) through (*vii*) of this section; and

(*3*) Such person has promptly notified any other person (or group within the meaning of Section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by that person under Section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to Section 13(d) of the Act or an amendment thereto.

(B) Any person relying on § 11.4(g)(2)(ii)(A) and § 11.4(g)(3)(ii) shall, in addition to filing any statements required thereunder, file a statement on Form F–11A, within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds ten percent of a class of equity securities specified in § 11.4(g)(2)(i) computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases of decreases by more than five percent of such class of equity securities. Four copies of such statement, including all exhibits, shall be filed with the Comptroller of the Currency and one each sent, by registered or certified mail, to the bank at its principal executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (ii)(B) unless the person thereafter becomes the beneficial owner of more than ten percent of the class and is required to file pursuant to this provision.

(C)(*1*) Notwithstanding paragraphs (ii)(A) and (ii)(B) and § 11.4(g)(3)(ii), a person shall immediately become subject to § 11.4(g)(2)(i) and § 11.4(g)(3)(i) and shall promptly, but not more than 10 days later, file a statement on Form F–11 if such person:

(*i*) Has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Form F–11A pursuant to paragraph (ii)(A) or (ii)(B), or is required to report such acquisition but has not yet filed the form:

(*ii*) Determines that it no longer has acquired or holds such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 11.4(g)(4)(ii); and

(*iii*) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 11.4(g)(2)(i).

(*2*) For the ten day period immediately following the date of the filing of a Form F–11 pursuant to this paragraph (ii)(C), such person shall not: Vote or direct the voting of the securities described in paragraph (ii)(C) (*1*)(*i*); nor, acquire an additional beneficial ownership interest in any equity securities of the bank of such securities, nor of any person controlling the bank.

(D) Any person who has reported an acquisition of securities in a statement on Form F–11A pursuant to paragraph (ii)(A) or (ii)(B) and thereafter ceases to be a person specified in paragraph (ii)(A)(2) shall immediately become subject to § 11.4(g)(2)(i) and § 11.4(g)(3)(i) and shall file, within ten days thereafter, a statement on Form F–11 in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(iii) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (g)(2)(i) and who is not required to file a statement under paragraph (g)(2)(i) by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 22, 1970, or because such person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal executive office, by registered or certified mail, and file with the Comptroller of the Currency, a statement containing the information required by Form F–11A. Four copies of the statement, including all exhibits, shall be filed with the Comptroller of the Currency.

(iv) For the purposes of Section 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Comptroller of the Currency pursuant to this Act, unless he knows or has reason to believe that the

information contained therein is inaccurate.

(v)(A) Whenever two or more persons are required to file a statement containing the information required by Form F–11 or Form F–11A with respect to the same securities, only one statement need be filed, provided that:

(1) Each person on whose behalf the statement is filed is individually eligible to use the Form on which the information is filed;

(2) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(3) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such a statement is filed on behalf of each of them.

(B) A group's filing obligations may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each such filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(3)(i) Form F–11—If any material changes occur in the facts set forth in the statement required by § 11.4(g)(2)(i) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be be filed with the Comptroller of the Currency and send or cause to be sent to the bank at its principal executive office, by registered or certified mail, and to each exchange on which the security is traded, an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition is exempted by Section 13(d)(6)(B) of the Act. Four copies of each such amendment shall be filed with the Comptroller of the Currency.

(ii) Form F–11A—Notwithstanding paragraph (i) of the section and provided that the person or persons filing a statement pursuant to § 11.4(g)(2)(ii) continues to meet the requirements set forth therein, any person who has filed a short form statement on Form F–11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that Form, or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F–11A. Four copies of such amendment, including all exhibits, shall be filed with the Comptroller of the Currency and one each sent, by registered or certified mail, to the bank at its principal executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 11.4(g)(2).

Note.—For persons filing a short form statement pursuant to § 11.4(g)(2)(ii), see also § 11.4(g)(2)(iii), (iv) and (v).

(4) (i) For the purposes of Sections 13(d) and 13(g) of the Act, a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(A) Voting power which includes the power to vote, or to direct the voting of, such security; and/or

(B) Investment power which includes the power to dispose, or to direct the disposition of, such security.

(ii) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of Sections 13(d) or 13(g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(iii) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in caluclating the number of shares beneficially owned by such person.

(iv) Notwithstanding the provisions of paragraphs (i) and (iii) of this section:

(A) (*1*) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (ii) of this section, if that person has the right to acquire beneficial ownership of such security, as defined in § 11.4(g)(4)(i) with sixty days, including but not limited to any right to acquire: (*i*) through the exercise of any option, warrant, or right; (*ii*) through the conversion of a security; (*iii*) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (*iv*) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraph (g)(4)(iv)(A)(*1*)(*i*), (*ii*) or (*iii*) of this section with the purpose or effecting of changing or influencing the control of the bank, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

(*2*) Paragraph (A)(*1*) remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in § 11.4(g)(2)(i) and may therefore give rise to a separate obligation to file.

(B) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or priviliges of the holders of the

securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(C) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided that:

(*1*) The plegee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with any transaction having such purpose or effect, including any transaction subject to § 11.4(g)(4)(ii);

(*2*) The pledgee is a person specified in § 11.4(g)(2)(ii)(A)(2), including persons meeting the conditions set forth in paragraph (g) thereof; and

(*3*) The pledgee agreement, prior to default, does not grant to the pledgee:

The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to Regulation T (12 CFR §§ 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under Section 15 of the Act.

(D) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting through the use of an offering circular filed pursuant to 12 CFR Part 16 shall not be deemed to be the beneficial owner of such securities until the expiration of forty days after the date of such acquisition.

(5) Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of Section 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

(6)(i) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of Section 13(d)(1) of the Act, whether such acquisition was through purchases or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local low to perform their duties.

(ii)(A) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of Section 13(d) and 13(g) of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such persons.

(B) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering; provided that:

(*1*) All the members of the group are persons specified in § 11.4(g)(2)(ii)(A)(2);

(*2*) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 11.4(g)(4)(ii);

(*3*) There is no agreement among or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(*4*) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(*7*) The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from Section 13(d) of the Act, provided that:

(i) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(ii) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(iii) the acquisition is duly reported, if required, pursuant to Section 16(a) of the Act and the rules and regulations thereunder.

(2) Section 11.5 would be amended by adding a new subparagaph (k)(5) and by amending subparagraph (l) and (1) to read as follows:

§ 11.5 Proxies, proxy statements, and statements where management does not solicit proxies.

* * * * *

(k) * * *

(5) If management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.5(f), or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 11.5(h) and the proponent wishes to bring this matter to the attention of the Comptroller, the proponent should promptly provide the Comptroller with a letter setting forth the reasons for this view and at the same time promptly provide management with a copy of such letter.

(l) *Tender Offers.* (1) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of any class of equity security, which is registered pursuant to Section 12 of the Act, of a national bank or a bank operating under the Code of Law for the District of Columbia, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Comptroller of the Currency a statement containing the information and exhibits required by Form F-13. The definition of beneficial owner set forth in § 11.4(g) for the purposes of Section 13(d)(1) of the Act shall apply also for purposes of Section 14(d)(1) of the Act.

* * * * *

§ 11.41 [Amended]

3. In § 11.41, Item 4, Summary of Operations, would be amended by adding a new instruction which would read as follows:

Item 4—Summary of Operations

* * * * *

3. Fully discuss the changes in earnings for the last two fiscal years. Material changes in the revenue and expense accounts should be described in percentage terms and absolute amounts and fully explained.

§ 11.41 [Amended]

4. In § 11.41, Item 8, Directors and Officers, would be amended as follows:

Item 8—Directors and Officers

The information required by Item 6 of § 11.51, shall be reported pursuant to this Item.

§ 11.41 [Amended]

5. In § 11.41, Item 10, Remuneration of Directors and Officers, and Item 13, Interest of Management and Others in Certain Transactions, would be deleted and would be combined into a new Item 10, Remuneration and Other Transactions With Management and Others, to read as follows:

Item 10—Remuneration and Other Transactions With Management and Others

The information required by Item 7 of § 11.51, shall be reported pursuant to this Item.

§ 11.41 [Amended]

6. In § 11.41, Item 12, Principal Holders of Securities, would be retitled, Security Ownership of Certain Beneficial Ownership and Management, and would be amended as follows:

Item 12—Security Ownership of Certain Beneficial Owners and Management

The information required by Items 5(d), (e) and (g) of § 11.51, shall be reported pursuant to this Item.

§ 11.42 [Amended]

7. In § 11.42, Item 4, Summary of Operations, would be amended by adding a new instruction which would read as follows:

Item 4—Summary of Operations

* * * * *

3. Fully discuss the changes in earnings for the last two fiscal years. Material changes in the revenue and expense accounts should be described in percentage terms and absolute amounts and fully explaned.

§ 11.42 [Amended]

8. In § 11.42, Item 5, Pending Legal Proceedings, Instruction 2 would be amended as follows:

Item 5—Pending Legal Proceedings

2. Any material proceedings to which any director, officer, or affiliate of the bank, any person holding in excess of 5 percent of the bank's outstanding stock, or any associate of any such director, officer or security holder is a party or has an interest materially adverse to the bank or any of its subsidiaries shall also be described.

* * * * *

§ 11.43 [Amended]

9. IN § 11.43, Item 2, Acquisition or Disposition of Assets, would be amended by adding a new Instruction 6 to which would read as follows:

* * * * *

Item 2—Acquisition or Disposition of Assets

* * * * *

Instructions. 1. * * *

* * * * *

6. Attention is directed to the requirements in Item 7 of the form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

§ 11.43 [Amended]

10. In § 11.43, Item 4, Changes in Bank's Certifying Accountant, would be amended by adding a new paragraph (e) which would read as follows:

Item 4—Changes in Bank's Certifying Accountant

(e) State whether the decision to change accountants was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

§ 11.43 [Amended]

11. Section 11.43, would be amended by adding a new Item 5, Resignation of Bank's Directors which would read as follows:

Item 5—Resignations of Bank's Directors

(a) If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies, or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F–3.

§ 11.43 [Amended]

12. In § 11.43, Present Item 5, Other Materially Important Events, would be renumbered Item 6. Present Item 6, Financial Statements and Exhibits, would be renumbered Item 7, and would read as follows:

Item 7—Financial Statements and Exhibits

* * * * *

Exhibits

Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report.

1. * * *

2. Letters from directors furnished pursuant to Item 6.

§ 11.44 [Amended]

13. In § 11.44, Item 1, Legal Proceedings, Instruction 3, would be amended as follows:

Item 1—Legal Proceedings

* * * * *

3. Notwithstanding the foregoing instructions, any bankruptcy, conservatorship, receivership or similar proceedings with respect to the bank or any of its significant subsidiaries shall be described. Any material proceeding to which any director, officer or affiliate of the bank any person holding in excess of 5 percent of the bank's outstanding stock, or any associate of any such director, officer or security holder is a party or has an interest materially adverse to the bank or any of its subsidiaries shall also be described.

§ 11.44 [Amended]

14. § 11.44, Item 6, Submission of Matters to a Vote of Security Holders, would be amended by adding a new paragraph (d) and Instruction 6 which would read as follows:

Item 6—Submission of Matters to a Vote for Security Holders

* * * * *

(d) Describe the terms of any settlement between the bank and any other participant (as defined in § 11.5(i))

terminating any solicitation subject to § 11.5(i) including the cost or anticipated cost to the bank.

Instructions. 1.

* * * * *

6. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

15. § 11.47, Form F–11 would be amended as follows:

§ 11.47 Form for statement filed pursuant to § 11.4(g)(2) of Part 11 (form F–11)

Comptroller of the Currency Form F–11

Acquisition Statement To Be Filed Pursuant to Section 13(d) of the Securities Exchange Act of 1934 and § 11.4(g)(2) (Amendment No.——)

(Name of Bank)

(Title of Class of Securities)

(CUSIP No.)

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Form F–11A to report the acquisition which is the subject of this Form F–11, and is filing this form because of § 11.4(g)(2) (ii) (C) or (D), check the following box [ ].

Note.—Four copies of this form, including all exhibits, should be filed with the Comptroller of the Currency. See § 11.4(g)(2)(i) for other parties to whom copies are to be sent.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Note).

CUSIP No.

(1) Names of Reporting Person; S.S. or I.R.S. Identification Nos. of Above Person ——

(2) Check the Appropriate Box if a Member of a Group (See Instructions)
(a) ——
(b) ——

(3) Source of Funds (see Instructions)——

(4) Check if disclosure of Legal Proceedings is Required Pursuant to Item 2(e)——

(5) Citizenship or Place of Organization——

Number of shares beneficially owned by each reporting person with:
(6) Sole Voting Power——
(7) Shared Voting Power ——
(8) Sole Dispositive Power ——
(9) Shared Dispositive Power ——

(10) Aggregate Amount Beneficially Owned by Each Reporting Person ——

(11) If the Aggregate Amount in Row 10 Excludes Certain Shares List the Number of Excluded Shares ——

(12) Percent of Class Represented by Amount in Row 10 ——

(13) Type of Reporting Person (See Instructions) ——

Instructions For Cover Page

(1) Names and Social Security Numbers of Reporting Persons. Furnish the full legal name of each person for whom the report is filed—*i.e.*, such person required to sign the form itself—including each member of a group.

Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "Special Instructions for Complying with Form F–11" below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check row 2(a). If the membership in a group is disclaimed to the extent that the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to § 11.4(g)(2)(v) in which case it may not be necessary to check row 2(b)].

(3) Classify the source of funds or other consideration used or to be used in making the purchases as required to be disclosed pursuant to Item 3 of Form F–11 and insert the appropriate symbol (or symbols if more than one is necessary in row (3):

Category of source:	*Symbol*
Subject Bank (Bank whose securities are being acquired).	SB
Another Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(4) If disclosure of legal proceedings or actions is required pursuant to Item 2(e) of Form F–11 row 4 should be checked.

(5) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish its place of organization. (See Item 2 of Form F–11).

(6)–(10), (12) *Aggregate Amount Beneficially Owned by Each Reporting Person, etc.*—Rows (6) through (10), inclusive, and (12) are to be completed in accordance with the provisions of Item 5 of Form F–11. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(13) *Type of Reporting Person*—Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, *i.e.*, if more than one is applicable, insert all applicable symbols) on the form:

Category:	*Symbol*
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund.	EP
Parent Holding Company	HC
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

Note—Filing persons may, in order to avoid unnecessary duplication, answer items on the form by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the form item. Moreover, such a use of a cover page item will result in the item becoming a part of the form and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Special Instructions for Comlying With Form F–11

Under Sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Comptroller of the Currency is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

* * * * *

Item 2—Identity and Background

* * * * *

(d) Whether or not, during the last five years, such person has been convicted

in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last full five years, such person was a party to a civil proceeding of a judicial body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to federal or state securities laws, or finding any violation with respect to such laws; and if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

* * * * *

Item 5—Interest in Securities of the Bank

(a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Comptroller of the Currency by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each peson named in Item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of Section 13(d)(3) of the Act;

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared;

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing on Form F–11, whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to: (1) the identity of the person covered by item 5(c) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share or unit; and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see § 11.4(g)(4)(iv) and the note thereto.

16. Proposed Form F–11A would be added to Part 11 in § 11.48 and would read as follows:

§ 11.48 Form for statement filed pursuant to § 11.4(g)(2) of Part 11 (Form F–11A)

Comptroller of the Currency Form F–11A

Short Form Ownership Statement To Be Filed Pursuant to Section 13(d) of the Securities Exchange Act of 1934 and § 11.4(g)(2)

(Amendment No. ———)

(Name of Bank)

(Title of Class of Securities)

(CUSIP Number)

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Note).

(1) Names of Reporting Person S.S. or I.R.S. Identification Nos. of Above Person

(2) Check the Appropriate Box if a Member of a Group (See Instructions).
(a) ———
(b) ———

(3) Citizenship or Place of Organization

Number of Shares Beneficially Owned by Each Reporting Person With:

(4) Sole Voting Power———
(5) Shared Voting Power———
(6) Sole Dispositive Power———
(7) Shared Dispositive Power———
(8) Aggregate Amount Beneficially Owned by Each Reporting Person———
(9) If the Aggregate Amount in Row 8 Excludes Certain Shares list the Number of Excluded Shares (See Instructions)———
(10) Percent of Class Represented in Row 8———
(11) Type of Reporting Person (See Instructions)———

Instructions for Cover Page

(1) *Names and Social Security Numbers of Reporting persons*—Furnish the full legal name of each person for whom the report is filed—*i.e.*, each person required to sign the form itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "Special Instructions for Complying With Form F–11A," below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to § 11.4(g)(2)(v) in which case it may not be necessary to check row 2(b)].

(3) *Citizenship of Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(4)–(8). (10) *Aggregate Amount Beneficially Owned By Each Reporting Person etc.*—Rows (4) through (8) inclusive, and (10) are to be completed in accordance with the provisions of Item 4 of Form F–11A. All percentages are to be rounded off to the nearest tenth (one place after decimal point).

(12) *Type of Reporting Person.*—Please classify each "reporting person" according to the following breakdown (see Item 3 of Form F–11A) and place the appropriate symbol on the form:

Category:	*Symbol*
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund.	EP
Parent Holding Company	HC
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

Note.—Filing person may, in order to avoid unnecessary duplication, answer items on the form by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Special Instructions for Complying With Form F–11A

Under Section 13(d), 13(g), and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the

Comptroller of the Currency is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers the disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

Item 1(a)—Name of Bank:

Item 1(b)—Address of Bank's Principal Office:

Item 2(a)—Name of Person Filing:

Item 2(b)—Address of Principal Business Office or, if none, Residence:

Item 2(c)—Citizenship:

Item 2(d)—Title of Class of Securities:

Item 2(e)—CUSIP Number:

Item 3—If this statement is filed pursuant to § 11.4(g)(2)(i) or § 11.4(g)(3)(ii), check whether the person filing is a:

(a) [ ] Broker or Dealer registered under section 15 of the Act

(b) [ ] Bank as defined in Section 3(a)(6) of the Act

(c) [ ] Insurance Company as defined in Section 3(a)(19) of the Act

(d) [ ] Investment Company registered under Section 8 of the Investment Company Act

(e) [ ] Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940

(f) [ ] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or Endowment Fund.

(g) [ ] Parent Holding Company, in accordance with § 11.4(g)(2)(ii)(A)(*2*)(*vii*) (Note: See Item 7)

(h) [ ] Group, in accordance with § 11.4(g)(2)(ii)(A)(*2*)(*viii*)

Item 4—Ownership

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in § 11.4(g)(2)(B) if applicable, exceeds five percent, provide the following information as of that date and identify those shares for which there is a right to acquire.

(a) Amount Beneficially Owned

(b) Percent of Class

(c) Number of shares as to which such person has:

(i) sole power to vote or to direct the vote ———

(ii) shared power to dispose or to direct the disposition of ———

(iv) shared power to dispose or to direct the disposition of ———

Instruction: For computation regarding securities which represent a right to acquire an underlying security see § 11.4(g)(4)(iv)(A).

Item 5—Ownership of Five Percent or Less of a Class

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [ ].

Instructions: Dissolution of a group requires a response to this item.

Item 6—Ownership of More Than Five Percent on Behalf of Another Person

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7—Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company

If a parent holding company has filed this schedule, pursuant to § 11.4(g)(2)(ii)(A)(*2*)(*vii*), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to § 11.4(g)(2)(iii), attach an exhibit stating the identification of the relevant subsidiary.

Item 8—Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to § 11.4(g)(2)(ii)(A)(*2*)(*viii*), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 11.4(g)(2)(iii), attach an exhibit stating the identity of each member of the group.

Item 9—Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by member of the group, in their individual capacity. See Item 5.

Item 10—Certification

The following certification shall be included if the statement is filed pursuant to § 11.4(g)(2)(ii).

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the bank and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

Signature.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed, or by his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Note—Four copies of this statement, including all exhibits, should be filed with the Comptroller of the Currency.

§ 11.51 [Amended]

17. In § 11.51, Item 3, Persons Making the Solicitation, would be amended as follows:

Item 3—Persons Making the Solicitation

(a) * * *

(b) * * *

(6) If any such soliciation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instructions. 1. * * *

2. The information required pursuant to paragraph (b) (6) of this item should be included in any amended or revised proxy statement or other soliciting material relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

§ 11.51 [Amended]

18. In § 11.51, Item 5, Voting Securities and Principal Holders Thereof, would be amended as follows:

Item 5—Voting Securities and Principal Holders Thereof

(a) * * *

(b) * * *

(c) * * *

(d) *Security ownership of certain beneficial owners.* Furnish the following information as of the most recent practicable date in substantially the tabular form indicated, with respect to any person (including any "group" as the term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount of shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in § 11.4(g)(4)(iv)(A).

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount of and nature of beneficial ownership	(4) Percent of class

(e) *Security ownership of management.* Furnish the following information, as of the most recent practicable date in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the bank as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Columns (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 11.4(g)(4)(iv)(A).

(1) Title of class	(2) Amount and nature of Beneficial ownership	(3) Percent of class

(f) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change of control, the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted, provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Comptroller of the Currency. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by Section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the bank maintains or would maintain a correspondent deposit account at such lending bank.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangement or understandings among members of both the former and new control groups and their associates with respect to the election of directors and other matters should be described.

Instructions to Item 5(d)(e) and (f). 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securites deemed outstanding pursuant to § 11.4(g)(4)(iv)(A).

2. For the purposes of this item, beneficial ownership shall be determined in accordance with § 11.4(g)(4). Include such additional subcolumns or any other appropriate explanation of Column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4) shared investment power.

3. The bank shall be deemed to know the contents of any statement filed with the Comptroller of the Currency pursuant to Section 13(d) of the Exchange Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate, or that a settlement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

(g) *Changes in Control.* Describe any arrangements, known to the bank, including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank. A description is not required of ordinary default provisions contained in any charter, trust indentures or other governing instruments relating to securities of the bank.

§ 11.51 [Amended]

19. In § 11.51, Item 6, Nominees and Directors, would be retitled Directors and Officers, and amended as follows:

Item 6—Directors and Officers

If action is to be taken with respect to election of directors, furnish the following information in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting. However, if the solicitation is made on behalf of persons other than management, the information required need only be furnished as to nominees of the persons making the solicitation.

(a) *Identification of directors and officers.* List all directors and officers of the bank and all persons nominated or chosen to become directors or officers. Indicate all positions and offices with the bank held by each person named. State the age of the persons named, their terms of office, and their periods during which each such person has served. Briefly describe any arrangement or understanding between each director and officer and any other person pursuant to which such director or officer was selected to serve in that capacity. The term officer is defined in § 11.2(o).

Instructions. Do not include any arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

(b) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of officers.

(c) *Family relationships.* State the nature of any family relationships between any director, officer, or person nominated or chosen by the bank to become a director or officer.

Instructions. The term "family relationships" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(d) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, officer or person nominated or chosen to become a director or officer, and each person named in answer to paragraph (b), including principal occupations and employment during that period, and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an officer or person named in response to paragraph (b), has been employed by the bank or a subsidairy of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions in order to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.
(2) Indicate any other directorship held by each director or person chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Act.

(e) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, officer or persons chosen or nominated to become a director or officer of the bank:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against such person, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) engaging in any type of business practice; or

(iii) engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action, or by a government agency, to have violated any federal or state securities law, and the judgment in such civil action or finding by the government agency has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this subparagraph (e) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Comptroller at the time of filing, as supplemental information and not as part of the statement, materials to which the omission relates, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by Item 6(e) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(f) Describe any of the following relationships which exist:

(1) If the nominee or director has during the past five years had a principal occupation or employment with any of the bank's parents, subsidiaries or other affiliates.

(2) If the nominee or director is related to an officer of any of the bank's parents, subsidiaries or other affiliates by blood, marriage or adoption (except relationships more remote than first cousin).

(3) If the nominee or director is, or has within the last two full fiscal years been,

an officer, director or employee of, or owns, or has within the last two fiscal years owned, directly or indirectly, in excess of 1 percent equity interest in any firm, corporation or other business or professional entity:

(i) Which has made payments to the bank or its subsidiaries for property or services during the bank's last full fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the bank or its subsidiaries for property or services during the current fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its full fiscal year;

(iii) To which the bank or its subsidiaries was indebted at any time during the bank's fiscal year in an aggregate amount in excess of 1 percent of the bank's total consolidated assets at the end of such fiscal year or $5,000,000, whichever is less;

(iv) To which the bank or its subsidiaries has made payments for property or services during such entity's last full fiscal year in excess of 1 percent of such entity's gross revenues for its last full fiscal year;

(v) To which the bank or its subsidiaries proposes to make payments for property or services during such entity's current fiscal year in excess of 1 percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed 1 percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or changes involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(viii) In calculating indebtedness for purposes of subparagraph (iii) above, debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded.

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the bank retained in the last two fical years or proposes to retain in the current fiscal year;

(5) That the nominee or director is a control person of the bank (other than solely as a director of the bank).

(6) In addition, the bank should disclose any other relationships it is aware of between the director or nominee and bank or its management which are substantially similar in nature and scope to these relationships listed above.

Note.—In the Comptroller's view, where significant business or personal relationships exist between the director or nominee and the banker, its management, including, but not limited to, those as to which disclosure would be required pursuant to item 6(b), characterization of a director or nominee by any "label" connoting a lack of relationship to the issuer and its management may be materially misleading.

(g)(1) *Committee.* State whether or not the bank has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2)(a) If the bank has a nominating or similar committee, state whether the committee will consider nominees recomended by shareholders and, if so;

(b) Describe the procedures to be followed by shareholders in submitting such recommendations.

(h) State the total number of meetings of the Board of Directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board of which he served (during the periods that he served).

(i) *Resignation of Directors.* If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and sumarize the director's description of the disagreement.

If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

§ 11.5 [Amended]

20. In § 11.51, Item 7, Remuneration and Other Transactions With Management and Others would be amended as follows:

Item 7—Remuneration and Other Transactions With Management and Others

(a) *Current remuneration.* Furnish the information required in the table below, in substantially the tabular form as specified, concerning all remuneration of the following persons and group for services in all capacities to the bank during the bank's last fiscal year:

(1) *Five officers or directors.* Each of the five most highly compensated officers or directors of the bank as to whom the total remuneration required to be disclosed in Columns C1 and C2, below, would exceed $50,000, naming each such person; and

(2) *All officers and directors.* All officers and directors of the bank as a group, stating the number of persons in the group without naming them.

(3) *Specified Tabular Format Remuneration Table*

(A)	(B)	(C)		(D)
		Cash and cash equivalent forms of remuneration		
Name of individual or number of persons in group	Capacities in which served	(C1) Salaries fees, directors fees, commissions, and bonuses	(C2) Securities or property insurance benefits or	Aggregate of contingent forms of remuneration reimbursement, personal benefits

Instructions to Item 7(a). 1. Columns A and B. Persons subject to this item. (a) This item applies to any person who was an officer or director of the bank at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not an officer or director of the bank, provided a statement to that effect is made. (b) The term officer is defined in § 11.2(o). (c) For the purposes of this item "bank" shall include the bank and all its subsidiaries.

2. *Column C* (a) Column C1 shall include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) Column C2 should include the following: (i) *Securities or property.* Where any of the specified persons or group (a) exercises any option, right or similar election in connection with any contract, agreement, plan or arrangement or (b) becomes entitled without further contingencies to retain securities or property, state 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. The fair market price of any such scurities or property shall be determined as of the date during the fiscal year that either of the events in (a) or (b) of this paragraph occurs, or if both events are contemplated, the date of the latter event.

(ii) *Personal benefits* (a) The value of personal benefits which are not directly related to job performance, which are furnished by the bank directly or through third parties to each of the specifid persons and group, or benefits furnished by the bank to other persons which indirectly benefit the specifid persons. Such personal benefits shall include the cost of any premiums or benefits paid by the bank for any life or health insurance policy or health plan of which the bank is not the sole beneficiary. Such benefits shall be valued on the basis of the aggregate actual cost to the bank. Information need not be furnished for any such benefit provided by the bank which does not discriminate in favor of officers or directors and which is available generally to all salaried employees. (b) No disclosure need be included as to any person named in the remuneration table if the aggregate amount of all personal benefits to such person did not exceed $5,000. If disclosure of such amounts is not made, a statement to that effect should be added in a footnote to the table. (c) If the bank cannot determine the actual cost of personal benefits for a specified person without unreasonable effort or expense, include a reasonable estimate of the cost of the personal benefit to the bank. If the bank cannot reasonably allocate the extent to which the benefit is personal, include the aggregate cost to the bank and estimate the percentage of cost attributable to personal use. If an estimate is made, disclose the factors upon which the estimate is based. (d) Please provide in a statement following the table a description of the bank's policies and practices with respect to providing personal benefits to officers, directors or principal shareholders. Describe the type of benefits provided and the basis for selection of the recipients.

3. *Column D.* Column D. shall include remuneration of the specified persons and group in whole or in part for services rendered during the latest fiscal year (including the forms of remuneration described in paragraphs (a) through (c) below) if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

(a) *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* (i) As to each of the specified persons and group, the amount expensed for financial reporting purposes by the bank 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.

(b) *Incentive and compensation plan and arrangements.* (1) With respect to stock options, stock appreciation rights plans, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the bank or another person granted, awarded or entered into at any time in connection with services to the bank, include as remuneration of each of the specified persons and group any attributable amount expensed by the bank for financial reporting purposes for the fiscal year as remuneration for any such person or group.

(2) Where amounts are expensed and reported in the remuneration table, and amounts are credited in a subsequent year in connection with the same plan or arrangement for any proper reason including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited are reflected in the table, include a footnote stating the amount of the credit and briefly describe such treatment.

(3) The term "options" as used in this item includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis.

(c) *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified persons and groups under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the bank for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

4. *Other permitted disclosure.* The bank 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.

(b) *Proposed remuneration.* Briefly describe all remuneration payments proposed to be made in the future pursuant to any existing plan or arrangement to the persons and group specified in Item 7(a). As to defined benefit or actuarial plans, with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 7(a), include a separate table showing the estimated annual beneifts payable upon retirement to persons in specified remuneration and years-of-service classification.

Information need not be furnished with respect to any group life, health, hospitalzation, or medical reimbursement plans which do not discriminate in favor of officers or directors of the bank and which are available generally to all salaried employees.

(c) *Options, warrants, or rights.* Furnish the following information as to all options to purchase any securities from the bank which were granted to or exercised by the following persons since the beginning of the bank's last fiscal year, and as to all options held by such persons as of the latest practicable date: (i) each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the bank as a group, without naming them;

(1) As to options granted during the period specified state: (i) the title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed.

(2) As to options exercised during the period specified, state (i) the title and aggregate amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for, and (ii) the average option price per share.

Instructions. 1. The term "options" as used in this paragraph (c) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or matrial amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such persons or group. (ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such period or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the lates practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

(d) *Indetedness of management.* (1) State as to each of the following specified person, herein called specified persons, who was indebted to the bank at any time since the beginning of the last full fiscal year to date: (1) the largest aggregate amount of indebtedness, including extensions of credit or overdrafts, endorsements or guarantees (in dollar amounts and as a percentage of total equity capital accounts at the time) outstanding at any time during such period; (2) the nature of the indebtedness and of the transaction in which it was incurred; (3) the amount thereof outstanding as of the latest practicable date; and (4) the rate of interest paid or charged thereon:

(A) Each director or officer of the bank;

(B) Each nominee for election as director;

(C) Each associate of any such director, officer, nominee or principal security holder.

Instructions. 1. Include the name of such person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this paragraph, unless any of the following are present:

(a) The extensions of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extensions of credit were not made in the ordinary course of business.

(c) Such extensions of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features, including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a specified person together with his associates, exceeded 10% of the equity capital accounts of the bank at that time or $5 million, whichever is less.

(2) If any extension of credit to the specified persons as a group exceeded 20% of the equity capital accounts of the bank at any time since the beginning of the last full fiscal year to date, disclose the maximum aggregate amount of extensions of credit to the group during the period, the aggregate amount as a percentage of the equity capital accounts of the bank and include a statement, to the extent applicable, that the bank has had, and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders and their associates, on the same terms, including interest rates, collateral and repayment terms on extensions of credit, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under Section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

4. Notwithstanding the foregoing, any transaction or series of transactions resulting in indebtedness to the bank in

its subsidiaries which may be considered material should be disclosed.

5. If the information called for by Item 7(d) is being presented in Form F–1, § 11.41 or an offering circular filed pursuant to 12 CFR Part 16, the information called for shall be presented for the last three full fiscal years in the Form F–1 and for the last two full fiscal years in the offering circular.

6. Where a specified person is an endorser or guarantor on any extension of credit made by the bank or its subsidiaries disclosure should be made to the extent otherwise applicable.

(e) *Transactions With Management.* Describe briefly any transaction since the beginning of the bank's last full fiscal year or any presently proposed transactions, to which the bank or any of its subsidiaries was or is to be a party, in which any of the specified persons in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest.

Instructions. 1. No information need be given in response to this Item 7(e) as to any remuneration or other transaction reported in response to Item 7(a), (b), (c) or (d), or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 7(c) or Instruction 2 or 3 to Item 7(d). Instruction 2 to Item 7(a) applies to this Item 7(e).

2. No information need be given in answer to this Item 7(e) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under an indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installment, does not exceed $40,000 for the term of each transaction or series of transactions; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7(e) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transactions with the bank and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction will be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof, to the seller.

6. If the information called for by Item 7(e) is being presented in Form F–1 § 11.41 or an offering circular filed pursuant to 12 CFR Part 16, the information called for shall be presented for the last three full years in the Form F–1 and for the last two full fiscal years in the offering circular.

7. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

8. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporation furnishing the services to the bank.

9. The foregoing instructions specify certain transactions and interests as to which information may be omitted in anwering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other, and the amount involved in the transaction, are among the factors to be considered in determining the signficance of the information to investors.

10. Any material proceedings to which any director, officer or affiliate of the bank, any person holding in excess of five percent of the bank's outstanding stock, or any associate of any such director, officer or security holder, is a party or has an interest materially adverse to the bank or any of its subsidiaries should also be described.

(f) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last full fiscal year to any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any person specified in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and,

where practicable, the amount of such interest.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 7(e) shall apply to this item 7(f).

2. For the purposes of this item the term "transaction" shall mean any property pruchased or sold, any extensions of credit made or outstanding or any remuneration paid during the period.

§ 11.51 [Amended]

21. In § 11.51, Item 8—Selection of Auditors, would be amended as follows:

Item 8—Selection of Auditors

(a) If action is to be taken with respect to the selection or approval of auditors, or if it is proposed that particular auditors shall be recommended by any committee to select auditors for whom votes are to be cast, name the auditors and describe briefly any direct financial interest or any material indirect financial interest in the bank or any of its parents or subsidiaries, or any connection during the past 3 years with the bank or any of its parents or subsidiaries in the capacity of promoter, underwriter, voting trustee, director, officer, or employee. If the auditors to be selected are other than those which were engaged as the principal auditors for the bank's most recently filed certified financial statements, briefly summarize the circumstances and conditions surrounding the proposed change of such auditors, and state whether such change was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

(b) If the bank has its financial statements certified by a certified public accountant: For the fiscal year most recently completed, describe each professional service provided by the auditor and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees, and, except as provided below, state the percentage relationship which the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by (1) any audit or similar committee of the Board of Directors and (2) for any service not approved by an audit or similar committee, the Board of Directors.

Instructions. 1. For purposes of this subsection, all fees for services provided in connection with the audit function (*e.g.*, reviews of quarterly reports, filings with the Board, and annual reports) may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

2. If the fee for any nonaudit service is less than 3 percent of the audit fees, the percentage relationship need not be disclosed.

3. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

4. Describe the circumstances and give details of any services provided by the bank's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

5. Describe any existing direct or indirect understanding or agreement that places a limit on current or future years' audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

22. In § 11.54, Form F–13, would be amended to read as follows:

§ 11.54 Tender offer statement filed pursuant to section 14(d)(1) of the Securities Exchange Act of 1934 (form F–13)

Comptroller of the Currency

Tender Offer Form Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934—Form F–13

(Amendment No. —)

_____

(Name of Subject Bank)

_____

(Bidder)

_____

(Title of Class of Securities)

_____

CUSIP Number

_____

(Name, Address, and Telephone Number of Person Authorized To Receive Notices and Communications on Behalf of Bidder)

The information required in the remainder of this cover page shall not be deemed to be "filed for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Note).

_____

(1) Names of Reporting Person S.S. or I.R.S. Identification Nos. of Above Person

(2) Check the appropriate Box if a Member of a Group (See Instructions)
(a) ☐
(b) ☐

(3) Sources of Funds (See Instructions)_____

(4) Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(e) or 2(f)_____

(5) Citizenship or Place of Organization_____

(6) Aggregate Amount Beneficially Owned by Each Reporting Person_____

(7) If the Aggregate Amount in Row (6) Excludes Certain Shares, List the Number of Excluded Shares (See Instructions)_____

(8) Percent of Class Represented by Amount in Row (7)_____

(9) Type of Reporting Person (See Instructions)_____

Instructions for Cover Page

(1) Names and Social Security Numbers of Reporting Persons—Furnish the full legal name of each person for whom the report is filed—*i.e.*, each person required to sign the form itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "SPECIAL INSTRUCTIONS FOR COMPLYING WITH FORM F–13", below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressely affirmed, please check row 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to § 11.4(g)(2)(v) in which case it may not be necessary to check row 2(b)].

(3) Source of Funds—Classify the source of funds or other consideration to be used in making purchases as required to be disclosed pursuant to Item 4 of the schedule and insert the appropriate symbol (or symbols if more than one is necessary) in row (3):

Category of source:	*Symbol*
Subject bank (bank whose securities are being required.	SB
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(4) If disclosure of legal proceedings or actions is required pursuant to either Items 2(e) or 2(f) of Form F–13, row 4 should be checked.

(5) Citizenship or Place of Organization—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish the place of organization. (See Item 2 of Form F–13.)

(6), (8) Aggregate Amount Beneficially Owned by Each Reporting Person, etc.—Rows (6) and (8) are to be completed in accordance with the Instructions to Item 6 of

Form F–13. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(10) Type of Reporting Person—Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, *i.e.*, if more than one is applicable, insert all applicable symbols) on the form:

Category:	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund.	EP
Parent Holding Company	HC
Group Member	GM
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

Note.—Filing persons may, in order to avoid unnecessary duplication, answer items on the form by appropriate cross reference to an item or items on the cover page(s). This approach may be used only where the cover page item or items provide all the disclosure required by the scheduled item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of that Act.

Special Instructions for Complying With Form F–13

Under Sections 14(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder the Comptroller of the Currency is authorized is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this form is mandatory, except for Social Security and I.R.S. Identification numbers the disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity shareholders. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the person involved for violation of the Federal securities laws and rules promulgated thereunder.

Instructions. Four copies of this statement, including all exhibits should be filed with the Comptroller of the Currency.

General Instructions

* * * * *

(Sec. 12(i) of the Securities Exchange Act of 1934, 15 U.S.C. 781(i)).

Note.—This proposal does not meet the Department of Treasury criteria for a significant regulation.

Dated: May 24, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79–16914 Filed 6–1–79; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Ch. I]

Terminal Control Area, Los Angeles International Airport; Informal Airspace Meeting

AGENCY: DOT, Federal Aviation Administration.

ACTION: Informal Airspace Meeting.

DATE: June 19, 21, 26, & 28, 1979.

ADDRESS: Place: June 19, 1979: 8:00 p.m., Robert Lee Frost Auditorium, Culver City High School, 4401 Elenda Street, Culver City, CA.

June 21, 1979: 8:00 p.m., Air National Guard Auditorium, 8030 Balboa Blvd., Van Nuys Airport, Van Nuys, CA.

June 26, 1979: 8:00 p.m., Campus Theater, Cypress College, 9200 Valley View, Cypress, CA.

June 28, 1979: 8:00 p.m., Auditorium, Sierra Middle School, 4950 Central Avenue, Riverside, CA.

SUMMARY: This notice announces an informal airspace meeting to discuss a Proposed Alteration to Terminal Control Area (TCA), Los Angeles International Airport, Los Angeles, California.

SUPPLEMENTARY INFORMATION: No verbatim minutes or transcripts will be taken. However, participants may submit written comments to be made a matter of record if they so desire. This action will not prevent participants from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed. Public comments are invited at this meeting on development of the proposed TCA configuration.

FOR FURTHER INFORMATION CONTACT: Jim McCord, Programs Officer, Los Angeles TRACON, 5885 W. Imperial Highway, Los Angeles, California, 90045; telephone (213) 646–6980.

Issued in Los Angeles, California, on May 19, 1979.

Charles E. Stafford,

Acting Chief, Airspace and Procedures Branch, AWE–530, Western Region, Federal Aviation Administration.

[FR Doc. 79–17188 Filed 6–1–79; 8:45 am]

BILLING CODE 4910–13–M

[14 CFR Part 71]

[Airspace Docket No. 79–RM–13]

Alteration of Airway Floor

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reduce the lower limits of VOR Federal Airway No. V–439 which extends from Dickinson, N. Dak., to Williston, N. Dak. This action would add approximately 300 vertical feet of controlled airspace along a segment of the airway that is not within transition areas thereby reducing chart clutter and possible confusion caused by the present airway floor variation being segmented both latitudinally and longitudinally.

DATES: Comments must be received on or before July 2, 1979.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 79–RM–13, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain Region,

Attention: Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received on or before July 2, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would remove the floor restriction in the definition of V–439. If the restriction is removed, a standard 1,200 foot floor airway would replace a variable floor that is difficult to chart and possibly confusing to pilots who must comply with visual flight rules.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) as follows:

Under V–439 "Dickinson, N. Dak., 13 miles, 62 miles, 40 MSL," is deleted and "Dickinson, N. Dak., to" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on May 25, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-17236 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-10]

Transition Area—Iola, Kans.; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Iola, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Allen County Airport, Iola, Kansas, which is based on a Non-Directional Radio Beacon (NDB), a navigational aid installed on the airport by the city of Iola, Kansas.

DATES: Comments must be received on or before July 11, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Benny J. Kirk, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Opeations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 11, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR Section 71.181) by designating a 700-foot transition area at Iola, Kansas. To enhance airport usage by providing instrument approach capability to the Allen County Airport, the City of Iola, Kansas, has installed a Non-Directional Radio Beacon (NDB) on the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Iola, Kansas, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by adding the following new transition area:

Iola, Kans.

That airspace extending upwards from 700 feet above the surface, within a 5-mile radius of the Allen County Airport (latitude 37°52′22″ N; longitude 95°22′58″ W); and within 2 miles each side of the 019° bearing

from the NDB facility (latitude 37°47'29" N; longitude 95°24'53" W); extending from the 5-mile radius to the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

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

Issued in Kansas City, Missouri, on May 24, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-17233 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 73]

[Airspace Docket No. 79-SO-24]

Alteration of Restricted Area Time of Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the time of designation of the Macon, Miss., restricted area R-4404 to seven days instead of six days a week. Increase in the pilot training requirements at this location, for the foreseeable future, requires that additional time be made available for the use of R-4404.

DATES: Comments must be received on or before July 2, 1979.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 79-SO-24, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before July 2, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) that would extend the time of designation of R-4404 to Sunrise to Sunset daily, thereby permitting its use seven days a week rather than the present six days a week. The Naval Air Training Command student pilot training load at Training Air Wing One (TRAWING ONE), has increased to the point that it has become necessary to have special use airspace available for flight training purposes seven days a week. This requirement is expected to continue for the foreseeable future.

The Department of Navy is the lead agency for the purpose of compliance with the National Environmental Policy Act. LCDR J. A. Douglas, TRAWING ONE Operations Officer, Training Air Wing One, Naval Air Station, Meridian, Miss. 39301; telephone (601) 679-2312, is the agency to which comments on the environment aspects can be addressed.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.44 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 698) as follows:

In R-4404 Macon, Miss., under time of designation: "Sunrise to Sunset, Monday through Saturday." is deleted and "Sunrise to Sunset." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on May 25, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-17235 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5492]

Proposed Flood Elevation Determinations for the City Guttenberg, Clayton County, Iowa, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Guttenberg, Clayton County, Iowa.

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

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, P.O. Box D, Guttenberg, Iowa.

SEND COMMENTS TO: The Honorable Neil Webster, Mayor, City of Guttenberg, City Hall, P.O. Box D, Guttenberg, Iowa 52052.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Guttenberg, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringest in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entitles. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississippi River	Northern corporate limits	622
	Just upstream from Lock and Dam No. 10.	622
	Just downstream from Lock and Dam No. 10.	621
	Southern corporate limits	621
Precipitation/Interior Drainage	North of Coszciusko Street	616
	East of U.S. Highway 52, between Pryam Street and Coszciusko Street	614
	West of U.S. Highway 52, between Schiller Street and Hayden Street.	613
	Between Koerner Street and Schilleer Street.	612
	Between DeKalb Street and Koerner Street.	611

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and, of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: May 22, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–17027 Filed 6–1–79; 8:45 am]

BILLING CODE 4210–23–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

Tank Vessel Operations—Puget Sound

AGENCY: Coast Guard, DOT.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is correcting the location of one of the scheduled public hearings and other errors which appeared in a Notice of Proposed Rulemaking published in the Thursday, April 12, 1979 **Federal Register** (44 FR 21974). For convenience these corrections include the typographical errors contained in the correction notice published in the Thursday, May 24, 1979 **Federal Register** (44 FR 30113).

EFFECTIVE DATE: These changes are effective June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Captain R. A. Janecek, Office of Marine Environment and Systems (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590, 202–426–1934.

CORRECTIONS: In FR Doc. 79–11352 commencing at page 21974 in the **Federal Register** of Thursday, April 12, 1979, the following changes should be made:

1. On page 21974 in the first column, in the last four lines of the last paragraph, the words "conference room, 2nd floor, Administration Building, U.S. Coast Guard Air Station, Port Angeles, Washington", are changed to read "Juan de Fuca Room, Haguewood Restaurant, Port Angeles, Washington,"

2. On page 21974 in the third column, in the second paragraph, third line, the word "interrelate" is changed to read "interrelated."

3. On page 21976 in the first column, in the last three lines of the third paragraph, the words "National Technical Information Service, Springfield, VA; Report No. CG–D–79–78" are changed to read "National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151, Report No. USCG–D–79–78."

4. On page 21977 in the third column, in the ninth line up from the bottom, the word "windward" is changed to read "leeward."

5. On page 21979 in the third column, in the fourth line, the word "vessels" is changed to read "vessel."

6. On page 21979 in the third column, in the fifteenth line the word "maintining" is changed to read "maintaining."

7. On page 21980 in the first column, in the eighth line up from the bottom, the word "matter" is changed to read "master."

8. On page 21980 in the second column the formula "$F=DV/2_{gt}$" is changed to read "F=DV/2gt and the formula "$T=\pi/2$" is changed to read "$T=\pi Tr/2$."

9. On page 21980 in the second column, in the nineteenth line up from the bottom the word "simplied" is changed to read "simplified."

10. On page 21980 in the third column second paragraph the words "National Technical Information Service, Springfield, VA Report No. CG–W–1–79." are changed to read "National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151, Report No. USCG–W–1–79."

11. On page 21980 in the third column, in the third paragraph, ninth line, the section number "§ 161.143(a)." is changed to read "§ 161.143(b)."

12. On page 21982 in the second column, in the eighth line of the first paragraph, the word "department" is changed to read "depart."

13. On page 21983 in the first column, in the eighth paragraph, the formula

"V=F KD" is changed to read "V= F/KD."

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

May 31, 1979.

[FR Doc. 79-17355 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 223]

Sale and Disposal of Timber; Advance Notice of Proposed Rulemaking

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Revision of Secretary of Agriculture's Regulation 36 CFR 223.10—Timber Export and Substitution Restrictions—is contemplated. The primary purpose of the revision will be to clarify definitions of export and substitution to ensure compliance with restrictions set forth in annual appropriations acts for the Department of the Interior and related agencies. Comments on the scope and nature of the revision are invited.

DATES: Comments must be received by August 3, 1979.

ADDRESSES: Send written comments to: John R. McGuire, Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-4051.

SUPPLEMENTARY INFORMATION: Since fiscal year 1974, annual Appropriations Acts for the department of the Interior and Related Agencies have included a provision that, "No part of any appropriation under this Act shall be available to the Secretaries of the Interior and Agriculture for use for any sale hereafter made of unprocessed timber from Federal lands west of the 100th Meridian in the contiguous 48 States or which will be used as a substitute for timber from private lands which is exported by the purchaser—*Provided*, That this limitation shall not apply to specific quantities of grade and species of timber which said Secretaries determine are surplus to domestic lumber and plywood manufacturing needs."

In order to implement this restriction, the Secretary of Agriculture has adopted 36 CFR 233.10. Experience with administration of this regulation has indicated a need to examine and clarify the definitions of export and substitution in order to ensure compliance with the Congressional direction. Notice is hereby given that revision of this regulation is contemplated. Comments are invited as to the nature and scope of the revisions which should be made.

Impact Analysis

The Department of Agriculture has made a preliminary determination that the proposed revisions are not "significant" and do not require a "regulatory analysis" under Executive Order No. 12044 and the Department's regulations. A final determination of these matters will be made after assessing the responses generated by this Notice.

David G. Unger,

Deputy Assistant Secretary for conservation Research & Education.

May 30, 1979.

[FR Doc. 79-17273 Filed 6-1-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1239-1]

Approval and Promulgation of Implementation Plans; Arizona Plan Revision: Arizona Department of Health Services, and Pima, Coconino, Mohave, Pinal-Gila, and Yuma Counties

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Arizona Department of Health Services' (ADHS) Rules and Regulations for Air Pollution Control and the air pollution control regulations of Pima, Coconino, Mohave, Pinal-Gila, and Yuma Counties have been submitted to the Environmental Protection Agency (EPA) by the ADHS for the purpose of revising the Arizona State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted up to August 3, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations:

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoeniz AZ 85007.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington DC 20460.

In addition, copies of the various proposed County revisions are available from the appropriate counties at the following locations:

Pima County Health Department, 151 West Congress Street, Tucson AZ 85701.

Coconino County Department of Public Health, 2500 North Fort Valley Road, Flagstaff AZ 86001.

Mohave County Health Department, 305 West Beale, Kingman AZ 86401.

Pinal-Gila Counties Air Quality Control District, P.O. Box 1076, Florence AZ 85232.

Yuma County Health Department, 201 Second Avenue, Yuma AZ 85364.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air and Hazardous Materials Division (415) 556-2938.

SUPPLEMENTARY INFORMATION:

The Arizona Department of Health Services submitted the following rules and regulations on the indicated dates:

ADHS Rules and Regulations for Air Pollution Control

August 20, 1973:
Reg. 7-1-1.6 (renumbered R9-3-106), Exceptions
Reg. 7-1-4.1 (renumbered R9-3-401), Sulfur Emissions—Copper Smelters
August 30, 1974:
Reg. 7-1-2.1 to 2.6 (renumbered R9-3-201 to 206), Ambient Air Quality Standards
Reg. 7-1-2.7 (renumbered R9-3-207), Evaluation
Reg. 7-1-2.8 (renumbered R9-3-208), Anti-Degradation
Reg. 7-1-2.9 (renumbered R9-3-209), Air Quality Goals
September 16, 1975:
R9-3-301, Visible Emissions: General
R9-3-306, Process Industries—General

Pima County Health Department

Air Quality Control District:
February 20, 1975:
Regulation I, Rule 1D, Emissions Regulated; Policy; Legal Authority
September 30,1976:
Regulation II, Rule 11A, Malfunctions, Start-up, Shutdown, and Scheduled Maintenance

Coconino County Department of Public Health

July 1, 1975:
Air Pollution Control, Chapter XII
Reg. 12–3–1, Ambient Air Quality Standards

Mohave County Health Department

July 1, 1975:
Air Pollution Control (Resolution 628)
Section 3, Reg. 3, Sulfur from Primary Copper Smelters
Section 6, Reg. 4, Anti-Degradation

Pinal-Gila Counties Air Quality Control District

July 1, 1975

Reg. 7–2–1.8, Anti-Degradation
Reg. 7–3–2.1, Copper Smelters
Reg. 7–3–2.5, Other Industries

Yuma County Health Department

July 1, 1975

Air Pollution Control, Article 8, Part 1
Reg. 8–1–2.8, Anti-Degradation
Reg. 8–1–4.1, Copper Smelters

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as revisions to the SIP. EPA has reviewed the proposed Arizona SIP revisions for consistency with the requirements of 40 CFR Part 51 and the Clean Air Act. The revisions to rules and regulations proposed to be approved in this action are consistent with all EPA requirements. EPA proposes to approve the submitted revisions with the following exceptions:

1. The State of Arizona submitted amendments to the ADHS Rules and Regulations for Air Pollution Control on January 4, 1979. This recent submittal replaces all previously submitted revisions to the ADHS Rules and Regulations. Therefore, EPA proposes to take no action on the earlier ADHS submittals listed below:

Reg. 7–1–1.6 (i.e., R9–3–106), *Exceptions*
Reg. 7–1–2.1 to 2.6 (i.e., R9–3–201 to 206), *Ambient Air Quality Standards*
Reg. 7–1–2.7 (i.e., R9–3–207), *Evaluation*
Reg. 7–1–2.8 (i.e., R9–3–208), *Anti-Degradation*
Reg. 7–1–2.9 (i.e., R9–3–209), *Air Quality Goals*
Reg. 7–1–4.1 (i.e., R9–3–401), *Sulfur Emissions-Copper Smelters*
R9–3–301, *Visible Emissions: General*
R9–3–306, *Process Industries—General*

2. Regulation II, Rule 11A, *Malfunction, Start-up, Shutdown, and Scheduled Maintenance* (Pima County), should be disapproved because it would permit sources to be exempted from applicable emission limitations and could therefore interfere with the attainment of the National Ambient Air Quality Standards (NAAQS). EPA's policy as stated in the April 27, 1977 **Federal Register** (42 FR 21472) is that while it might be appropriate to refrain from enforcing where a malfunction is truly beyond the control of a source, any malfunction provision which allows a regulatory exemption is unacceptable.

3. The following County rules are proposed by EPA for disapproval since the Arizona Revised Statutes and ADHS's rules and regulations give the State Department and Hearing Board exclusive jurisdiction over smelters:

(a) Section 3, Reg. 3, *Sulfur from Primary Copper Smelters* (Mohave County)
(b) Reg. 7–3–2.1, *Copper Smelters* (Pinal-Gila Counties)
(c) Reg. 8–1–4.1, *Copper Smelters* (Yuma County)

The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received on or before August 3, 1979, will be considered. Comments received will be available for public inspection at the EPA Region IX Office, the ADHS office, and the EPA Public Information Reference Unit at the addresses listed above.

(Sec. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: May 17, 1979.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 79–17268 Filed 6–1–79; 8:45 am]
BILLING CODE 6560–01–M

[40 CFR Part 100]

[FRL 1212–2A]

Judicial Review Under Clean Water Act; Races to the Courthouse

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: In response to separate requests from an industry group and an environmental group, EPA is proposing a rule to fix a definitely ascertainable time at which its Clean Water Act regulations will be considered issued for purposes of judicial review. The purpose of the rule is to provide greater fairness in future "races to the courthouse."

DATE: Written public comments should be submitted to the person listed immediately below by August 3, 1979.

FOR FURTHER INFORMATION CONTACT: Richard G. Stoll, Jr., Office of General Counsel (A–131), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–0760.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is today proposing a rule which would establish a definitely ascertainable time of issuance for all finally-promulgated EPA regulations which are reviewable in the Federal Courts of Appeals under Section 509(b) of the Clean Water Act (33 U.S.C. 1369(b)). The purpose of such a rule would be to assure that all parties desiring to sue have a fair start in any "race" to the court house.

EPA is proposing this rule in response to recent requests from the Utility Water Act Group ("UWAG") and the Natural Resources Defense Council, Inc. ("NRDC"). UWAG's request is reproduced as Appendix A to this notice. NRDC's request is reproduced as Appendix B. This rule, when final, would appear in Part 100 (previously reserved) to Title 40 of the Code of Federal Regulations

II. The Problem

A. Forum Shopping.

Virtually every EPA regulation is challenged in court by industrial and/or environmental groups. Many litigants feel that their likelihood of success depends substantially upon which of the eleven circuit Courts of Appeals decides the case. A litigant therefore often attempts to bring suit in the circuit which will presumably be most sympathetic to the litigant's claims. This is known as "forum shopping."

Congress has taken care to curtail this practice under the Clean Air Act, the Noise Control Act, the Safe Drinking Water Act, and the Solid Waste Disposal Act by providing for exclusive review of EPA's nationally-applicable regulations in a single court.[1] Section 509(b)(1) of the Clean Water Act, however, permits a litigant to sue in any circuit in which he or she "resides or transacts business." Many of the large industrial firms (or coalitions of firms) and the environmental groups which regularly sue EPA can be said to "reside or transact business" in most if not all of the eleven circuits. Thus, there is a

[1] These statutes, along with the Clean Water Act and the Toxic Substances Control Act (TSCA), are the most significant statutes under which EPA is directed to protect the environment with standards developed through nationally-applicable regulations. The Federal Insecticide, Fungicide and Rodenticide Act, on the other hand, is generally administered through case-by-case licensing and cancellation procedures. Depending upon public reaction and/or practical experience with today's proposal under the Clean Water Act, EPA may take similar action under TSCA in the future.

tremendous potential for forum shopping under the Clean Water Act.

B. The Race

The forum shopping preferences of various litigants challenging the same regulation may conflict. For instance, EPA may issue a regulation which the industry feels is too stringent and an environmental group feels is too lax. The industry may feel that court X will be most sympathetic to its claims, while the environmental group would prefer court Y.

The most important element to forum shopping when the preferences of different litigants diverge is the "race" to the courthouse. This is because 28 U.S.C. 2112(a) provides that where suits challenging the same regulation are filed in more than one circuit, all suits must be transferred to the circuit in which a suit "was first instituted." [2]

Although races have not yet been common under the Clean Water Act, the recent requests from UWAG and NRDC (organizations which sue EPA frequently) indicate a potential for increased racing activity. This is especially likely because EPA is obligated under the 1977 Amendments to the Clean Water Act and under a Consent Decree [3] to issue many important nationally-applicable regulations in the next few years. Moreover, recent experiences of other Federal agencies indicate that lawyers suing the government are placing increased emphasis on racing skills.[4]

III. The Need for Certainty as to When the Race Begins

As indicated in the UWAG and NRDC requests, there is substantial uncertainty over precisely what event in the rulemaking process triggers the start of the race. There are many points at which one could argue that the Administrator has taken the necessary step. It could arguably be when he signs a rule; when he announces it at a press conference (or in a press release); [5] when any party happens to find out he signed the rule; when the document arrives at the Office of the Federal Register; when the document is made officially available for public inspection at the Office of the Federal Register; or when the document actually appears in the **Federal Register.**

This uncertainty can only contribute to unfairness in the racing process and/or to expensive and duplicative protective filings by the racers.[6] EPA therefore agrees with UWAG and NRDC that EPA should publish a rule which specifies precisely when EPA's nationally-applicable Clean Water Act regulations should be considered issued for purposes of judicial review. EPA also agrees that this time should be set at a point when every interested party, including those who may not be located in Washington, D.C., can have fair notice of EPA's action before the race begins.

Such purposes would not be well served by providing for a time any earlier than the date of **Federal Register** publication. This is because one racer may obtain exclusive advance knowledge of the fact that a rule has been signed or delivered to the **Federal Register.** (See the UWAG and NRDC requests.) This would not necessarily reflect an impropriety on anyone's part, but may merely reflect one racer's diligence at repeatedly telephoning someone at EPA.

Moreover, EPA feels that even the **Federal Register** publication date would not be sufficiently fair because Washington-based racers would still have an advantage. First, they could learn through personal visits or phone inquiries when a rule was scheduled to be published. Second, mail delivery of the **Federal Register** is a day or two later in other parts of the country.

IV. EPA's Proposal

EPA's proposal is that a nationally-applicable Clean Water Act regulation will ordinarily be considered issued for purposes of Section 509(b)(1) at 1:00 p.m. (eastern time, whether standard or daylight) on the day which is one week after the date of publication of the rule in the **Federal Register.** [7] EPA has selected 1:00 p.m. eastern time because all of the eleven circuits will have been open long enough by then for racers to position themselves adequately. EPA has selected a period of one week after publication in order to assure that interested parties in all parts of the country have had an opportunity to be made fully aware of the contents of EPA's rule. EPA's selection of an ascertainable time which will be well-known in advance to all racers should also preclude such insults to the legal process as portrayed in the FERC order attached to NRDC's request.

V. Conclusion

As long as Congress treats judicial review of nationally-applicable regulations under the Clean Water Act differently than under the Air, Noise, Drinking Water, and Solid Waste Acts, the potential for wide-spread forum shopping and racing under the Clean Water Act will remain. EPA cannot change this through any rulemaking action. EPA can, however, take rulemaking action which would at least make racing as fair as possible. That is the purpose of this proposed rule.

EPA solicits written comments on all aspects of this proposed rulemaking. All comments should be sent to Richard G. Stoll, Jr. at the address listed above, and should be post-marked (or hand-delivered) no later than August 3, 1979.

(Secs. 501(a), 509(b)(1), Clean Water Act, as amended (33 U.S.C. 1361(a), 1369(b)(1)).)

Dated: May 25, 1979.

Douglas M. Costle,

Administrator.

PART 100—JUDICIAL REVIEW UNDER CLEAN WATER ACT

40 CFR Part 100 is hereby proposed to be designated as "Judicial Review Under Clean Water Act" as set forth above and a new 100.01 is hereby proposed as follows:

§ 100.01 Timing of Administrator's action.

Unless the Administrator otherwise explicitly provides in a particular promulgation or approval action, the time and date of the Administrator's action in promulgating (for purposes of sections 509(b)(1)(A), (C), and (E)) and approving (for purposes of section 509(b)(1)(E)) shalls be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date which is one week after the date such promulgation or approval is published in the **Federal Register.** If, however, the latter date falls on a federal holiday, then the time and

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[2] While the transferee circuit may then transfer the suits to any other circuit "for the convenience of the parties in the interest of justice," a litigant desiring a particular circuit has an obvious advantage if his suit is the first filed.

[3] *NRDC v. Costle,* 8 ERC 2120 (D.D.C. 1976), *modified* at 12 ERC 1833 (D.D.C. 1979).

[4] See the FERC "Report of the Presiding Judge," January 19 1979, which is attached to NRDC's request, for an incredible exposition of the highly-developed state of the racing art. The Third Circuit recently remarked upon the "exercise of technological ingenuity in achieving first filing," but complained: "Unlike race tracks, however, courts are not equipped with photoelectric timers * * *." *United Steelworkers of America* v. *Marshall,* No. 78-2452 (3rd Cir., Opinion of January 10, 1979).

[5] Although many rules are not announced at press conferences or in press releases.

[6] A recent race on a Consumer Product Safety Commission (CPSC) order is illustrative. Out of an abundance of caution, one racer filed five separate peitions (on the same CPSC order) over a period of 32 days; the other racer filed three petitions in the same period.

[7] The proposal would permit the Administrator to deviate from this general rule in extraordinary circumstances by specifying a different issuance date for any particular rulemaking document. For instance, EPA may on rare occasion under the Clean Water Act issue a regulation which requires parties immediately to take (or refrain from) some action. It may be unfair in such a circumstance to delay the judicial review rights of adversely affected parties.

date of the Administrator's action shall be at 1:00 p.m. eastern time the next day after the latter date which is not a federal holiday.

Appendix A

Hunton & Williams, 707 East Main Street, P.O. Box 1535, Richmond, Va. 23212, (804) 788–8200, Feb. 5, 1979.

The Honorable Douglas M. Costle, Administrator, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Notice of Final Rulemaking

Dear Mr. Costle: Your regulatory agenda indicates that you will soon begin issuing significant new regulations under the Clean Water Act. We believe it is important for you first to address the Agency's procedures for issuing or announcing regulations. We urge you particularly, on behalf of the Utility Water Act Group, to take steps now to define what constitutes final action in adopting Water Act regulations and to ensure that all affected segments of the public learn of this action at the same time. As we explain below, these steps are necessary to simplify and expedite judicial review. They are also important to avoid the unfairness inherent in advance, prepublication disclosure of regulations to selected individuals or organizations. You may be interested to know that attorneys representing a wide spectrum of interests, including the Natural Resources Defense Council, have reviewed a draft of this letter. All agree that some action is necessary.

Many of the upcoming regulations may be subject to direct judicial review in the courts of appeals under § 509(b) of the Clean Water Act, 33 U.S.C. § 1369(b), as construed in recent decisions. *See, e.g., Virginia Electric & Power Co. v. Costle,* 566 F.2d 446 (4th Cir. 1977). This provision allows a party affected by the regulations ninety days to file a petition for review. Any affected party may file in any judicial circuit in which it resides or transacts business. All review proceedings that are filed, however, are subject to transfer under 28 U.S.C. § 2112(a) to *the* circuit in which the *first* proceeding is begun. The result is that § 509(b) is transformed into a "race" statute. The winner chooses the forum.

There are two, related problems. First, with EPA regulations, no one is quite sure what starts the race. Unlike some other federal agencies, EPA has no regulation to define when rulemaking action is final for purposes of judicial review under provisions like § 509(b). Is it when you sign the rules, announce them, or send them to the Office of the Federal Register? Or is it not until the Federal Register stamps them or publishes them?

Second, unless the point of final action, once chosen, is carefully tied to public disclosure, some parties may obtain advance knowledge and thus get the jump on others. Such selective advance disclosure, whether intended or not, is inappropriate.

The public interest, as well as notions of fairness, demands that the Agency provide equal notice, and thus, equal opportunity for choice of forum to interested portions of the public. The court in *Industrial Union Dep't, AFL–CIO v. Bingham,* 570 F.2d 965 (D.C. Cir. 1977), and earlier in *Saturn Airways, Inc., v. CAB,* 476 F.2d 907, 909 (D.C. Cir 1973), admonished the agencies to define "issuance" of regulations clearly and to do so in a way that would avoid the potential unfairness in selective advance disclosure. We think that you have an obligation to do so.

We believe you should take two measures and do so promptly. First, we urge you to publish a rule to define the precise moment of final action (*i.e.,* "the Administrator's action") for purposes of judicial review under § 509(b) of the Clean Water Act. Second, we urge you to adapt the Agency's internal procedures and policies as necessary to ensure that no one segment of the interested public receives notice of that moment before others. A definition of final action that is closely tied to public disclosure will make the second step easier to implement. But the definition should require more than simply notice of the action; it should require public disclosure of the substance of the regulations as well. This is necessary to avoid false starts and unnecessary litigation. We urge you to take these actions within sixty days, and in any event, before you issue the next set of major regulations under the Water Act.

Sincerely, *George C. Freeman, Jr.*

cc: Joan Z. Bernstein, Esq., Thomas Jorling, Esq., Marvin b. Durning, Esq., William F. Pedersen, Jr., Esq., Jeffrey G. Miller, Esq., James A. Rogers, Esq.

Appendix B

Natural Resources Defense Council, Inc., *917 15th Street, N.W., Washington, D.C. 20005, 202 737–5000, Feb. 20, 1979.*

Joan Z. Bernstein, *General Counsel, Environmental Protection Agency, 401 M Street, S.W. (A 130) Washington, D.C. 20460.*

Dear Ms. Bernstein: I understand that on February 5, 1979, Mr. George C. Freeman, Jr., of Hunton and Williams wrote to Administrator Costle on behalf of the Utility Water Act Group (UWAG) urging that EPA establish rules governing the timing of final agency actions, as well as procedures regarding disclosure of those actions to the public, for purposes of judicial review under § 509(b) of the Clean Water Act (letter attached). The UWAG letter stresses the unfairness of selective, advance disclosure of such actions to potential litigants, and the wastefulnesss of litigation to determine the appropriate judicial review forum that occasionally results from current EPA procedures. NRDC shares Mr. Freeman's concerns, and therefore joins UWAG in its request for clarifying regualtions and disclosure procedures.

The cases cited in the UWAG letter illustrate quite well the issues that are raised when agencies carelessly or selectively disclose the content of final regulations. NRDC has been involved in two actions for review of EPA regulations wherein similar issues arose, necessitating crucial, yet wasteful, expenditures of resources to determine the correct judicial forum. *NRDC* V. *EPA,* Civil No. 78–1929 (D.C. Cir. 1978) (review of Clean Water Act regulations); *NRDC* v. *EPA,* Civil No. 76–1145 (D.C. Cir. 1976) (review of Clean Air Act regulations). This problem occasionally can be serious, and it should be overcome. But we believe EPA shouuld strive as well to eliminate other elements of unfairness that usually are present in any race to the courthouse.

The process of selecting a judicial review forum often resembles a circus. The time selected to commence a race ordinarily is tied to a physical action or event, such as signing a document, announcing regulations at a press conference, or logging-in a document at the Office of the Federal Register (OFR). In such circumstances, petitioners which have considerable resources have an unfair opportunity to win the race and select their favored forum. For those who can afford it, the race will involve teams of many people using hand signals, open long-distance telephone lines or two-way radios, and even diversionary tactics.[1] Petitioners who cannot employ such tactics commence the race under a severe handicap. This is an extremely unfair situation, and it obviously arises when the outcome of important litigation is likely to depend on the result of the race. Indeed, it may be this unfairness that causes petitioners to seek advance disclosure in the first place.

We suggest, therefore, that EPA explore the idea of establishing the date and time of final action, for purposes of review, 4–5 days after publication of a notice in the **Federal Register** fully disclosing the substance of the action to all interested persons. Such a procedure would make the race fair, since it would be impossible to gain an advantage by camping at the EPA or the OFR, or by merely being in Washington, D.C., where a final action or event can be monitored. Moreover, this simple device would eliminate any possibility that unintentional advance disclosure of an action would undermine the fairness and equality of the race.

If this concept were adopted, most races would be extremely close, perhaps resulting in deadheats and/or disputes about the calibration of time stamps in clerks' offices around the country. Where the race results in a virtual tie, we do not think the Courts of Apeals would split hairs as the FERC Administrative Law Judge tried to do in the attached report. Rather, we think the courts would select a single forum based on its *appropriateness* under the circumstances, not on whether one petitioner was better equipped to run the race than another. EPA could encourage this approach by the way it drafts the regulations and explains thier purpose. We would favor such a result, and I am confident UWAG would agree.

Finally, we disagree with two aspects of UWAG's request. First, we believe EPA should develop an approach to this problem that covers not only Clean Water Act regulations but also actions to review

[1] For example, I have attached to this letter a Report of the Presiding Judge in a proceeding before the Federal Energy Regulatory Commission demonstrating the lengths to which some petitioners have gone, and are *capable* of going, to shop for their forum.

regulations issued under the Clean Air Act and other major legislation administered by the Agency. The problems described by UWAG are not unique to actions for the review of water pollution rules, and should be dealt with by EPA in a comprehensive fashion. Second, we urge you not to act precipitiously in this regard merely in order to meet the promulgation deadline for the next set of regulations issued under the Clean Water Act. While EPA should move expeditiously toward a solution to this problem, we think the solution requires a careful analysis of the statutory review provisions involved, a survey of the experience other agencies have had with such rules and procedures, and full opportunity for public comment.

We would be pleased to meet with you to discuss this matter at your convenience. Thank you for your consideration.

Sincerely,

J. Taylor Banks.

cc: Douglas Costle, Thomas Jorling, Marvin Durning, David Hawkins, James Moorman.

Enclosure

Attachment to Appendix B

United States of America Federal Energy Regulatory Commission

Tenneco Oil Company, *et al., Docket Nos. CI75–45, et al.*

Report of the Presiding Judge to the Commission

Appearances

Gordon Gooch, Bruce F. Kiely, Kirk K. Van Tine and *Michael B. Silva* for Tenneco Oil Company

Justin R. Wolf and *Louise C. Powell* for Placid Oil Company, Hunt Petroleum Corporation and Hunt Industries

Michael D. Alexander, Edward H. Gerstenfield and *Fred Price* for First Mississippi Corporation

Jerome Akerman, Curtis R. Boisfontaine and *Nicholas W. Fels* for Air Products and Chemicals, Inc.

Dana Contratto and *Frederick Moring* for Associated Gas Distributors

Peter Schiff, Richard A. Solomon and *Dennis Lane* for The Public Service Commission of New York State

John H. Burnes, Jr., Richard F. Generelly and *W. O. Strong III* for Ashland Oil Company

William J. Froehlich for the Secretary of the Federal Energy Regulatory Commission

Robert Christen for the Staff of the Federal Energy Regulatory Commission

Grossman, Presiding Administrative Law Judge:

This Report, as directed by the Commission's Order Establishing Additional proceeding Pursuant to Court Order (issued November 20, 1978), transmits the results of proceedings inquiring into the filing of petitions for review of Opinion No. 10, *Opinion and Order Modifying Federal Power Commission Opinion No. 789* (issued March 20, 1978), and Opinion No. 10–A, *Opinion and Order Denying Rehearing* (issued June 21, 1978).

Background

Opinion No. 10, as pertinent, denied requests by certain interstate pipelines to transport natural gas produced in the offshore federal domain to certain onshore gas consuming facilities and found the policy of producer reservations (the "Chandeleur incentive") no longer served the public interest. Applications for rehearing of Opinion No. 10 were filed with the Commission under Section 19(a) of the Natural Gas Act (15 U.S.C. § 717r(a)). Upon issuance of Opinion No. 10–A, denying rehearing, the matter became ripe for judicial review as provided by Section 19(a).

Section 19(b) of the Natural Gas Act (15 U.S.C. § 717r(b)) provides an option to any party aggrieved by an order of the Commission to obtain review of that order "in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia." This section further provides that "[u]pon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part."

The filing option, with the concomitant vesting of exclusive jurisdiction in the court of appeals before which the first filing is made, underlay an event commonly known as a race to the courthouse. For reasons not here material, Air Products and Chemicals, Inc., and Tenneco Oil Company each attempted first filing in the United States Court of Appeals for the Fifth Circuit, and Associated Gas Distributors (AGD) and the Public Service Commission of the State of New York (NYPSC) jointly attempted first filing in the United States Court of Appeals for the District of Columbia Circuit on behalf of the NYPSC.

By order entered October 30, 1978, the Fifth Circuit noted "appeals were filed in both courts at approximately the same time, [but] it is uncertain which forum received first notice." Upon motion of the NYPSC, the Fifth Circuit, pursuant to its Rule 24(f), referred the venue issue to the Commission for findings of fact. On November 8, 1978, the District of Columbia Circuit entered an order holding in abeyance a motion to dismiss the filing in that circuit or transfer venue to the Fifth Circuit, pending action by the Commission with respet to the Fifth Circuit referral.

A prehearing conference was convened December 1, 1978, to determine the manner in which the facts concerning the venue issue could best be presented. Oral hearings were held December 14, 21, and 28, 1978, at the Commission, the District of Columbia Circuit and the Fifth Circuit, respectively. Statements of perceived facts and arguments were filed January 11, 1979, by Tenneco and jointly by Public Service Commission and Associated Gas Distributors, and one day later (hereby accepted) by Air Products.

Pursuant to Section 3(a) the Uniform Time Act of 1966 (15 U.S.C. § 206a(a)), the standard time observed within each time zone of the United States (with exceptions not here material) was, on June 21, 1978, the standard time prescribed for that zone advanced by one hour, commonly known as Daylight Saving Time. The District of Columbia, situated in the Eastern time zone, observed Eastern Daylight Time (EDT) and New Orleans, Louisiana, the site city in which the Office of the Clerk of the Fifth Circuit is located, observed Central Daylight Time (CDT). At any given moment, EDT is precisely one hour later than CDT.

Events at the Federal Energy Regulatory Commission

By letter of May 30, 1978, filed June 1, 1978, counsel for the NYPSC requested the Commission Secretary to give all parties 24 hours' notice of the intended issuance of the order respecting rehearing of Opinion No. 10. The matter had been scheduled to be considered at the Commission's May 31, 1978, meeting, which was open to the public. At the meeting the Commission voted to deny rehearing of Opinion No. 10, a fact then known to the public. On June 20, 1978, the Secretary issued a notice to the public stating:

The Order on Rehearing * * * will be isued at approximately 3:00 p.m., EDT, on June 21, 1978.

On June 21, 1978, at approximately 2:30 p.m., EDT, a clerk in the Commission's Office of Public Information (OPI) "calibrated" a time stamp machine to be used soon afterward by setting the minute indicating wheel of the machine to correspond with the telephone company time signal. The setting of the machine was made to conform only to the minute indication of the phone signal, inasmuch as the machine has no means by which it can be calibrated to seconds. Observation of the machine, however, disclosed the minute to minute cycle of the machine is unaffected by changing the minute indicator. In other words, if the machine has cycled one-half minute from 2:29 p.m., manual resetting of the machine to 2:30 p.m., at that instant will result in the machine changing to 2:31 p.m., thirty seconds later. When asked whether the machine had been set to the closest minute, as opposed to the indicated minute, the clerk was not sure. The calibration of a similar device in the Fifth Circuit, as discussed below, supports the "indicated minute" calibration.

At or about 3:00 p.m., EDT, on that day, the Commission's Secretary proceded to OPI, located on the first floor of the Commission's offices at 825 North Capitol Street, Washington, D.C., and placed the Commission's official copy of what would be Opinion No. 10–A at the opening of the time recorder. A representative of Tenneco and one of AGD–NYPSC were present, in a position enabling them to witness the issuance of the order. The Secretary awaited the next minute change of the time recorder, indicated by an audible click, and inserted the document fully into the receiving slot, thus activating the time stamp. The document so issued bears the time indication "3:02 PM."

Tenneco's Race

Tenneco had in position a "human chain" extending from OPI to a public telephone on the second floor of the Commission's offices.

Each person in the five-person chain was in the line-of-sight of the person behind and ahead. The chain began with counsel for Tenneco proximate to the Commission's Secretary and extended with a member in the open doorway from OPI to the first floor corridor, to a member at the bottom of the staircase to the second floor, to a member on the staircase, and ended with a member at the public telephone on the second floor. An open line to a representative of Tenneco at the Fifth Circuit Clerk's office had been established. Counsel, standing near the Secretary, discerned that the time stamp machine advanced each minute at the time an electric wall clock in OPI indicated nine seconds after the minute. (The wall clock was not calibrated, nor was calibration attempted, with any other time device.) He thus was prepared for the time stamp device to advance to its 3:02 p.m., setting, and, upon hearing it click, gave a hand signal, relayed through the human chain to the member at the public phone who told the party at the Fifth Circuit to file. The advance of the time stamp device to the 3:02 p.m., EDT reading preceded, by from one to five seconds, as discussed further below, the moment at which the Secretary caused Order No. 10–A to be time stamped.

A reenactment of the human chain, with a telephone link from the public telephone used on June 21, 1978, to a telephone hidden from view in OPI and manned by Staff Counsel as an agreed neutral party was conducted. This indicated, as closely as could be determined, the elapse of time from the first signal from OPI to receipt at the telephone in the Fifth Circuit of the message to file. The demonstration was conducted three times. The observed times were 2.11 seconds, 1.16 seconds, and 0.95 seconds. The first, perhaps, should be discounted because it is believed by the Presiding Judge that Staff Counsel was surprised at the speed of signal communication and may have hesitated in indicating receipt of the message.

A member of the AGD–NYPSC group testified that he recalled the door between OPI and the first floor corridor being closed, and that the Tenneco human chain member opened the right hand door (as viewed from within OPI) to relay the signal. This was challenged by Tenneco which maintained the left hand door was open. Observation of the doors discloses the left hand door is the only one having a knob and capable of being opened. The right hand door is bolted in the closed position. Although it is more likely the left hand door was open, a simlar reenactment was conducted with the door closed, yielding a time of 1.31 seconds.

AGD–NYPSC's Race

The joint AGD–NYPSC team established a similar human chain from OPI to a public telephone in an office proximate to that of the Clerk of the D.C. Circuit. This chain originated with a member standing near the Commission's Secretary, and extended across the courtyard between 825 and 941 North Capitol Street, a distance of approximately 150 feet, via a member standing outside the glass window wall of OPI, to a member inside the lobby of 941 North Capitol Street, to a member at a public telephone nearby. Each member of the chain was in view of the member ahead and behind. An open line had been established between the involved telephones. At least one second, and as much as five seconds after the OPI time stamp machine advanced to 3:02 p.m., the Secretary inserted Order No. 10–A causing it to be stamped. At that instant, the AGD–NYPSC representative made a hand signal which was relayed through the chain to the member at the public phone at 941 North Capitol Street, who, in turn transmitted the fact to the member at the D.C. Circuit. The AGD–NYPSC group also had established a chain of people through the lobby of 825 North Capitol Street to mislead unidentified "opposition" into believing that path had been chosen. This chain did not have any role other than subterfuge. Reenactment of the AGD–NYPSC chain yielded times of 1.84 seconds, 1.66 seconds, and 1.36 seconds.

Events at the Fifth Circuit

At the Office of the Clerk, a member of the Tenneco team, constituting the end of the open telephone line from Washington, was at a desk, as permitted by the Clerk (the public telephone adjacent to the Clerk's office was out of order). Approximately 30 feet across the office, the final member of the Tenneco team had ready a petition to hand the Clerk's representative for filing.

The Clerk's time stamp machine, which records in increments of minutes, had been calibrated that day, as well as on the day of hearing, with the Government Time Service obtained by telephone. Observation of the device during the hearing disclosed that at precisely 11:33:48 a.m., CST, the device advanced to 11:34 a.m. The wall clock, clearly visible in the Clerk's office, displayed a time one minute and forty-five seconds ahead of that indicated by the time stamp device. The wall clock is not calibrated, nor is it attempted to be calibrated, with any other time device. The time stamp device is activated by pressing downward on its top with one's hand after the document to be stamped has been placed in the device.

Upon receipt of the signal to file over the telephone connection, the Tenneco representative relayed the signal to the member at the Clerk's counter who thereupon handed the petition (with two ink changes previously entered) to the filing Clerk who stamped it as filed. The imprint indicated a filing time of "2:02 p.m., CDT" (3:02 p.m., EDT). Although it is stated the wall clock displayed precisely 2:02:03 p.m. (CDT) at the time of filing, significance cannot be attached because the clock had not been calibrated and its accuracy cannot be determined.

Approximately 45 seconds before receiving the telephonic signal to file, Tenneco's representative observed a person filing a document, time stamped by the filing Clerk at 2:01 p.m., CDT (3:01 p.m., EDT). No other document was presented for filing in the several minutes preceding Tenneco's filing.

Air Products testified it had a petition for review of Opinion Nos. 10 and 10–A filed in the Fifth Circuit between 2:01 and 2:02 p.m., CDT (3:01 and 3:02 p.m., EDT), in an attempt to be first to file. The filing was accomplished immediately after the time stamp machine cycled to 2:01. The time between that filing and the receipt of the Tenneco filing signal from Washington indicates the Air Products petition was filed prior to the Secretary's action in time-stamping Opinion No. 10–A for release. Air Products claims reliance upon the Commission's customary practice of merely releasing documents to the public at about 3:00 p.m., EST daily, and lack of any notice to the contrary respecting the release of Opinion No. 10–A.

The Fifth Circuit has at least tacitly approved the Commission's release time practice (*Shell Oil Company* v. *Federal Power Commission*, 509 F.2d 176, 179 (1975)), as has the D.C. Circuit (*American Public Gas Ass'n.* v. *Federal Power Com'n.*, 555 F.2d 852, 856 (1976)).

Events at the D.C. Circuit

A member of the AGD–NYPSC team was stationed at a public telephone, approximately 40 feet from the entrance to the Clerk's office. Another member was stationed midway between in the corridor, and another at the open doorway to the Clerk's office. All were within sight and hearing of another. The filing signal received by the member at the telephone was relayed to the Clerk through this chain. The terminal member heard the yelled signal from his compatriot at the telephone.

The time stamp device in the Clerk's office, activated by inserting a paper, had been calibrated that day, and on the day of hearing, with the telephone company time signal. Calibration of this device which indicates increments of tenths of seconds, was accomplished to the nearest tenth of a second. On the day of hearing, it was observed the device was correct within approximately three seconds, with the device being that increment ahead of the telephone signal. AGD–NYPSC testified the filing Clerk had taken the petition and held it in the opening of the time stamp device, ready, with a slight movement, to activate the time stamp. The filing clerk testifed that this would not comport with normal office procedures, and did not believe she had held the petition "at the ready." She believed the final member of the AGD–NYPSC team had handed the petition to her at the time it was desired it be filed. Observation of the places at which the team members were located lends greater credence to the testimony of the AGD–NYPSC witness.

The petition, as received and time stamped by the filing Clerk, indicates a time of filing of 3:02:10 p.m., EDT.

Other Observations

There are certain possible defects in the form of the filings of both Tenneco and NYPSC. Rule 15(c) of the Federal Rules of Appellate Procedure provides, in pertinent part:

At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties * * *

There is no evidence presented of perfecting service at or before the filing of either petition. Rather, copies apparently were placed in the mail, thus effecting

service, but not until after filing the respective petitions.

The petition of NYPSC filed in the D.C. Circuit indicates it seeks review of "Opinion Nos. 10 and 10–A issued March 20, 1978, and June 9, 1978 * * *", whereas, of course, Opinion No. 10–A was issued June 21, 1978. This petition also failed to indicate the telephone number of counsel submitting the petition, as required by the Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit, dated March 1978 (Part 2, Subpart B, at p. 10). In the above-cited cases, however, both circuits may consider defects in form not fatal to review (509 F.2d at 178) or not jurisdictional in nature (555 F.2d at 856).

Certification and Order

Pursuant to Ordering paragraph (b) of the Commission's Order issued November 20, 1978, and in accordance with the provisions of Section 1.30 of the Commission's Rules of Practice and Procedure, I hereby certify:

I. That the following constitutes the record in this proceeding:

(1) The official stenographer's report of the prehearing conference held on December 1, 1978, and the hearings held December 14, 21, and 28, 1978, consisting of volumes 1 through 5, pages 1 through 236, including errata.

(2) Exhibits 1 through 12, being the documents described on the index pages of the aforesaid official stenographer's report, all of which exhibits were received in evidence.

(3) Statements of Perceived Facts and arguments submitted by Tenneco Oil Company, Air Products and Chemicals, Inc., jointly by Associated Gas Distributors and the Public Service Commission of the State of New York, and jointly by Placid Oil Company, Hunt Petroleum Corporation, Hunt Oil Company, and Hunt Industries.

II. That the Report of the Administrative Law Judge, of which this certification is a part, is my Report upon the hearings in this proceeding, is subscribed by me, and was released for reproduction on January 19, 1979.

It is Ordered, that a copy of this Report shall be served upon each party to the proceedings in the consolidated docket numbers herein.

Dated at Washington, D.C., this 19th day of January 1979.

Stephen L. Grossman,

Presiding Administrative Law Judge.

[FR Doc. 79-17287 Filed 6-1-79; 8:45 am]

BILLING CODE 6560-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

[41 CFR Ch. 51]

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: Pursuant to Section 2 of Executive Order 12044, the Committee is not planning to issue or review any significant regulations during the period June 1, 1979 through November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street, North, Suite 610, Arlington, Virginia 22201, Telephone: 703/557–1145.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-17257 Filed 6-1-79; 8:45 am]

BILLING CODE 6820-33-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1300]

[Ex Parte No. 326 (Sub No. 2)]

Applicability of Predominant Article Theory in Publication of Updated Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This is the initial notice in a proceeding to consider the applicability of the predominant article theory and other matters relating to the publication of updated tariffs for railroads. By this notice the Commission is seeking public comment on this practice and possible alternative methods to facilitate the tariff updating process.

DATES: Comments by interested person are invited, and must be filed with the Secretary of the Commission on or before July 16, 1979.

ADDRESS: Interested persons should file an original and 10 copies of their comments with: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz, (202) 275–7693 or 275–7656.

SUPPLEMENTARY INFORMATION: Ex Parte No. 326, *Regulations Governing The Transfer Of General Increases From Master Tariffs Into The Individual Tariffs Of Railroads Or Rail Ratemaking Organizations*, was instituted in accordance with section 209 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4 R Act) which set statutory time limits within which all rates must be incorporated into individual rate tariffs. Although master tariffs and connecting link supplements facilitate the railroads' task of initially publishing nationwide general increases, their continued use over extended periods of time runs counter to the goal of tariff simplification.

It is apparent from the legislative history that Congress intended to legislate a solution to the serious problem of the proliferation of master tariff publications. In enacting section 209, Congress provided a statutory basis to insure that all individual tariffs are uniformly updated in an expeditious manner.

We concluded in Ex Parte No. 326 that revised regulations were necessary to conform Commission procedure to section 209. Tariff Circular No. 20 (49 CFR 1300) has been amended by the addition of new regulations governing the transfer of general increases from master tariffs into the individual tariffs of railroads or rail ratemaking organizations.

Several parties to Ex Parte No. 326 questioned the propriety of the predominant article theory as it is used in tariff updating.[1] This theory of publication has been applied by the railroads where different increases are applicable to the individual commodities included in a broad grouping of articles under a main heading in the Standard Transportation Commodity Code (STCC). Under this theory, the increase applicable to the predominant article within the group determines the increase to be applied to all commodities within that group. To illustrate, conversion supplements applying the predominant article theory may contain the following provision:

> For certain items, where different increases apply on related articles shown in the item, or descriptive listing of commodities, the rates have been brought forward into this supplement on the basis of the increases applying to the predominant articles in the item or description.

Several different standards have been used to determine the predominant article. For example, the determination may be based upon the largest number of commodities within the group taking a like increase, or upon the commodity being transported in the largest volume. It appears that no fixed standard is uniformly applied by all carriers to like situations.

Amercian Cyanamid Company in its pleading in Ex Parte No. 326 cited two major problems created by application of the predominant article theory:

[1] Sometimes referred to as the predominant commodity, or dominant article theory.

First, if the commodity is not assigned a STCC number, the highest increase will always apply and shippers must petition the railroads for the increase that should apply to that class of product or to at least assign a specific STCC number to that product. The second problem is not only tied to STCC number, but also to the groupings of commodities into single items, generally in the Docket 28300 series, whereby some of the higher rated products are grouped with lower products and under the Predominant Article Theory, the entire item is subjected to higher increases in Master Tariff increase tables.

Aluminum Associastion, Inc., (Association) emphasized in its pleading in Ex Parte No. 326 that the transfer of increases from a master tariff should not result in greater charges on commodities. Otherwise it is not a tariff update but an increased rate which carriers would impose upon shippers under the guise of a tariff updating process. As a sanction against the use of the predominant article theory, and to remedy other errors in updating tariffs, the Association suggested the following additional proposed rules be added after section 1300.32(e):

(f) No greater increase than that authorized by the Commission or published in the master tariff may be imposed on the basic individual tariffs. Publications effecting the transfer of increases from master tariffs must bear an appropriate symbol denoting no change in rate as provided in Section 1300.2 of these regulations.

(g) In transferring increases authorized by a master tariff to rate items covering a group of commodities subject to varying increases in the master tariff, the lowest increase authorized for the commodity group shall be applied to the rate item.

(h) Tariffs which result in greater increases than authorized by the Commission, or greater than published in the master tariff, as a result of the transfer publication, shall be deemed unlawful. All such transfer publications shall contain appropriate refund provisions providing that charges paid by shippers in excess of the authorized or published increase shall be refunded by the carrier.

The Association suggests that the addition of these regulations will do much to eliminate tariff errors and streamline the cumbersome procedure now faced by shippers.

General Mills, Inc., in its initial statement in Ex Parte No. 326, noted that the application of different increases to products published in the same tariff item causes the following problems:

(1) a larger number of rates become applicable to the same number of products;

(2) rate retrieval work is significantly increased and becomes more complex;

(3) tariff updating work becomes more difficult and time consuming.

To mitigate the above problems, it urged the Commission to implement rules requiring the application of the same general increase percentage for products included in the same rate item of the basic rate tariff, which, in effect, would preclude the application of the predominant article theory.

We agreed with the railroads that Ex Parte No. 326 was limited in scope and not the proper forum to consider regulations addressed to the predominant article theory. However, because we disagree with the railroads' contention that problems associated with that theory should be solved on a case by case basis, this proceeding is being instituted.

The purpose of this notice is to obtain the views of all interested parties on the issues involved and the rules suggested by various parties as discussed herein before the Commission formulates rules or a policy statement governing the applicability of the predominant article theory.

Dated May 22, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17154 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 661]

Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California; Supplemental Notice of Proposed Rulemaking, Clarification of Comment Period and Notice of Hearing

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Supplemental Notice of Proposed Rulemaking, clarification of comment period and notice of non-oral hearing.

SUMMARY: This notice extends the public comment period on the regulations implementing the amendment to the "Fishery Management Plan (FMP) for the Commercial and Recreational Salmon Fisheries Off The Coasts of Washington, Oregon, and California" from June 18, to June 24, 1979. Further, it responds to three requests for a special non-oral hearing under authority of Section 305(b) of the Fishery Conservation and Management Act, 16 U.S.C. 1855(b), and requests the public to participate by submitting written comments.

DATES: Comments must be received on or before June 24, 1979.

ADDRESS: Written comments by persons desiring to be a party to the non-oral hearing should be sent to "Special Salmon Hearing", Northwest Regional Director, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109.

The administrative record on the FMP which includes scientific data and other records pertinent to the issues to be addressed at the special non-oral hearing, and copies of all written comments will be available at the same address. Photocopies of written comments also will be available at: Information Library, Page Building, No. 2, Room 193, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Johnson, Northwest Regional Director, National Marine Fisheries Service, Seattle, Washington 98109. Telephone 206–442–7575.

SUPPLEMENTARY INFORMATION: On April 25, 1979, the National Oceanic and Atmospheric Administration published in the **Federal Register** (44 FR 24291) emergency and proposed regulations to implement an amendment to the "Fishery Management Plan (FMP) for the Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon and California." The FMP was submitted by the Pacific Fishery Management Council and approved by the Assistant Administrator for Fisheries on April 13, 1979. The emergency regulations were effective on April 25, 1979, and were to remain in effect until June 3, 1979. Those regulations will be extended for an additional 45-day period by separate notice. Written comments on the proposed regulations were invited until June 18, 1979 (fifty-five (55) days subsequent to their publication in the **Federal Register**).

The early (55 day) closing date for receipt of comments on the proposed regulations is hereby corrected and comments are invited until June 24, 1979.

In addition, subsequent to approval of the FMP and publication of the emergency and proposed regulations by the Assistant Administrator for Fisheries, the National Marine Fisheries

Service (NMFS) received three petitions requesting a non-oral hearing under Section 305(b) of the Act. The petitions, submitted by the Washington State Commercial Passenger Fishing Vessel Association, All Coast Fishermen Marketing Association and certain Pacific Northwest and Columbia River Indian Tribes, were broad in scope and asked that a non-oral proceeding be convened to review the FMP and regulations with attention to the following questions:

(1) Whether management measures for commercial ocean troll and recreational salmon fishing off the Coast of Washington, more restrictive than those provided in the emergency and interim regulations (44 FR 2429, April 25, 1979), should be imposed to increase the number of salmon bound for the Columbia River, Washington coastal streams and Puget Sound tributaries for spawning and for allocation to the Indian fishermen, certain tribes being parties to the Columbia River Plan of February 28, 1977.

(2) Whether scientific evidence exists which would justify more lenient treatment of the Makah Tribe, exempting tribal members from the barbless hook requirement and the 28" chinook minimum total length requirement for 1979.

(3) Whether new evidence might require modifying conclusions regarding status of stocks for 1979.

(4) Whether scientific evidence exists which indicates that additional emergency regulations which further restrict the Ocean salmon troll fishery are required in order to prevent overfishing of salmon stocks.

Recognizing the widespread interest generated by the more restrictive FMP and regulations for Pacific ocean salmon fishing for 1979, and due to the broad range of interests expressed by the various user groups, it has been determined that a non-oral proceeding is appropriate and would best serve the purposes of the Act and the public interest. Accordingly, public comments regarding those above-listed subjects contained in the three petitions are especially invited until June 24, 1979. Thes comments will be reviewed by a select committee of scientific experts who will then make their findings and recommendations regarding the four issues listed above known to the Assistant Administrator for consideration prior to the promulgation of final regulations governing Pacific Ocean salmon fishing for the 1979 season.

Dated this 29th day of May 1979 at Washington, D.C.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17161 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-22-M

FEDERAL TRADE COMMISSION

[16 CFR Part 305]

Labeling and Advertising of Consumer Appliances; Oral Presentation Before Commission Concerning Rule Recommended by Staff

AGENCY: Federal Trade Commission.

ACTION: Notice of Oral Presentation Before Commission Concerning Rule Recommended by Staff.

SUMMARY: The Federal Trade Commission has granted a request by the National Retail Merchants Association to make an oral presentation to the Commission concerning the final rule recommended by the Commission staff. The oral presentation will focus primarily on the question of the required disclosure of a highlighted nationwide estimated annual energy cost versus disclosure of an alternative measure of energy consumption. The Commission invites requests for additional oral presentations from only those other members of the public who have participated in the rulemaking proceeding. Members of the public who have participated in the rulemaking proceeding are invited to submit requests to make an oral presentation to the Commission on the question of the required disclosure of a highlighted nationwide estimated annual energy cost versus disclosure of an alternative measure of energy consumption.

DATE: Requests will be accepted until June 14, 1979.

ADDRESS: Requests to make an oral presentation should be sent to: Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. They should be identified as "Request To Make Oral Presentation—Appliance Energy Labeling Rule." When feasible, four copies should be submitted.

FOR FURTHER INFORMATION CONTACT: Andrew I. Wolf, 202–724–1453. Lucerne D. Winfrey, 202–724–1560. Kent C. Howerton, 202–724–1514.

SUPPLEMENTARY INFORMATION: The Commission has granted a request made by the National Retail Merchants Association to make an oral presentation concerning the required disclosure of a highlighted nationwide estimated annual energy cost versus disclosure of an alternative measure of energy consumption. The Commission staff has recommended that the final labeling rule require disclosure of a highlighted nationwide estimated annual energy cost on the labels of five of the seven product categories which the staff recommends be covered by the labeling rule, and an energy efficiency disclosure for the remaining two product categories.

In granting the request of the National Retail Merchants Association, the Commission wishes to extend the same opportunity to other interested parties who have participated in the rulemaking proceeding. Therefore, the Commission invites other participants to request an oral presentation. The oral presentations will focus primarily on the question of the required disclosure of a highlighted nationwide estimated annual energy cost versus disclosure of an alternative measure of energy consumption.

The Commission will use its discretion in selecting parties to make the presentations, depending upon the volume of requests received. If a selection process is necessary, the Commission will endeavor to ensure that the varying viewpoints on the issue are adequately represented. To assist in selection of presenters, requesters should identify their views briefly and indicate why they should be selected to present their views to the Commission. Each participant will be notified in advance of the time, date and location of the oral presentations and of the procedures to be followed.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-17402 Filed 6-1-79; 9:26 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 4, 5, and 7]

[Notice No. 314]

Labeling and Advertising of Wine, Distilled Spirits and Malt Beverages; Extension of Comment Period to the Notice of Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period to August 3, 1979, for the notice of proposed rulemaking, published February 2, 1979, on prescribing requirements for partial ingredient labeling of alcoholic beverages.

DATE: Comment period is extended an additional sixty (60) days from June 4, 1979, to August 3, 1979. All comments must be received on or before August 3, 1979.

ADDRESS: Comments must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044 (Attention: Chief, Regulations and Procedures Division).

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Bureau of Alcohol, Tobacco, and Firearms published a notice of proposed rulemaking (44 FR 6740) to obtain input on contemplated revisions to 27 CFR Part 4, Labeling and Advertising of Wine; 27 CFR Part 5, Labeling and Advertising of Distilled Spirits; and 27 CFR Part 7, Labeling and Advertising of Malt Beverages. On March 13, 1979, an extension of the comment period was published in the **Federal Register** (44 FR 14577) extending the comment period from April 3, 1979, to June 4, 1979). Due to the impact of the proposal on consumers and the fact that the proposal contains extensive changes for industry members, ATF is extending the comment period from June 4, 1979, to August 3, 1979.

Disclosure of Comments

Written comments or suggestions may be inspected by any person at the ATF Reading Room, Office of Public Affairs, Room 4408, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., during normal business hours.

After consideration of all comments and suggestions, ATF may issue a Treasury decision. The proposals discussed in this notice may be modified due to the comments and suggestions received.

Drafting Information

The principal authors of this document are Thomas B. Busey and Raymond Conrad of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority: This notice of proposed rulemaking is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Signed: June 1, 1979.

G. R. Dickerson,

Director.

[FR Doc. 79-17417 Filed 6-1-79; 9:46 am]

BILLING CODE 4810-31-M

Notices

Federal Register
Vol. 44, No. 108
Monday, June 4, 1979

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

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Brundage Watershed, Idaho; Intent To Prepare an Environmental Impact Statement

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 being prepared for the Brundage Watershed, Adams County, Idaho.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Amos I. Garrison, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for improving the irrigation water supply, the distribution system, the irrigation efficiencies, the quality of wetlands, and fisheries. The planned works of improvement include:

1. Enlargement of the Brundage Reservoir Dam to a storage capacity of 7,330 acre feet.

2. Improvement and extension of existing canals, including necessary structural components.

3. The application of land treatment measures.

4. A 500 acre foot conservation pool in the reservoir which will be managed through a joint agreement between the sponsors and the Idaho Fish and Game Department.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The SCS invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Amos I. Garrison, Jr., State Conservationist, Soil Conservation Service, Room 345, 304 North 8th Street, Boise, Idaho 83702, telephone 208–384–1601

(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: May 23, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources.

[FR Doc. 79–17240 Filed 6–1–79; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket Nos. 31620, etc.*]

American Airlines, Inc., Respondent; Enforcement Proceeding; Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above titled proceeding, which was assigned to be held on June 12, 1979, (44 Fr 24118, April 24, 1979) is postponed until further notice.

Dated at Washington, D.C., May 30, 1979.

Alexander N. Argerakis,

Administrative Law Judge.

[FR Doc. 79–17260 Filed 6–1–79; 8:45 am]

BILLING CODE 6320–01–M

[Docket Nos. 26368, etc.[1]]

Eastern Air Lines, Inc., Respondent, Enforcement Proceeding; Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above titled proceeding, which was assigned to be held on June 5, 1979, (44 FR 19499, April 3, 1979) is postponed until further notice.

Dated at Washington, D.C., May 30, 1979.

Alexander N. Argerakis,

Administrative Law Judge.

[FR Doc. 79–17259 Filed 6–1–79; 8:45 am]

BILLING CODE 6320–01–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended May 25, 1979, CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

* Dockets 31620, 31830, 32016, 32057, 32071, 32072, 30494, 30499, and 30696

[1] Dockets 26368, 26369, 39313, 27415, 28292, 28294, 28597, 28830, 29216, 29228, 29229, 29247, 29856 and 29998.

Subpart Q Applications

Date filed	Docket No.	Description
May 21, 1979	35597	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Las Vegas, Nevada, and the terminal point New York (JFK), New York. Answers and Conforming Applications are due on June 18, 1979.

Subpart Q Applications

Date filed	Docket No.	Description
May 21, 1979	35598	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Dallas/Ft. Worth, Texas, and the terminal point Los Angeles, California." Answers and Conforming Applications are due on June 18, 1979.
May 21, 1979	35599	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Albuquerque, New Mexico, and the terminal point Las Vegas, Nevada. Between the terminal point Albuquerque, New Mexico, and the terminal point Los Angeles, California. Between the terminal point Albuqeruque, New Mexico, and the terminal point Salt Lake City, Utah." Answers and Conforming Applications are due on June 18, 1979.
May 21, 1979	35600	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Memphis, Tennessee, and the terminal point Denver, Colorado. Between the terminal point Memphis, Tennessee, and the terminal point Houston, Texas." Answers and Conforming Applications are due on June 18, 1979.
May 21, 1979	35601	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal points Dallas/Ft. Worth, Texas, and the terminal point Phoenix, Arizona." Answers and Conforming Applications are due on June 18, 1979.
May 21, 1979	35602	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33159. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following markets: "Between the terminal point Honolulu, Hawaii, and the terminal point San Diego, California. "Between the terminal point Denver, Colorado, and the terminal point Honolulu, Hawaii." Answers and Conforming Applications are due on June 18, 1979.
May 25, 1979	35669	Air New England, Inc., c/o V. Michael Straus, Esq., Suite 401, 1001 Connecticut Avenue, N. W., Washington, D.C. 20036. Application of Air New England, Inc. requests the Board pursuant to Section 401 of the Act for an amendment of its certificate of public convenience and necessity for Route 172 so as to grant permissive authority in the Rutland, Vermont-Keene, New Hampshire market. Answers and Conforming Applications are due on June 22, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17261 Filed 6-1-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

National Bureau of Standards, et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before June 24, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, at 666-11th Street, N.W. (Room 735), Washington, D.C.

Docket No. 79-00249. Applicant: National Bureau of Standards Washington, DC 20234. Article: Automatic Ratio Arm Bridge. Manufacturer: Automatic Systems Laboratories Ltd., United Kingdom. Intended use of article: The article is intended to be used for studies of the thermodynamic properties of: standard reference materials (SRM's) issued by the National Bureau of Standards as secondary energy standards to calibrate (or check) reaction and heat capacity calorimeters; and key compounds (in the sense that their thermodynamic properties play a critical role in selecting values for the properties of other compounds). The experiments conducted in reaction calorimeters involve measurement of the corrected temperature rise (i.e., corrected for heat absorbed from the environment) of the calorimeter, ΔO_1, caused by the change in interval energy associated with a chemical reaction, ΔU. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79-00253. Applicant: New Mexico State University, Box 3D, Physics Department, Las Cruces, NM 88003. Article: Magnet and Optical System. Manufacturer: Leybold-Heraus, West Germany. Intended use of article: The article is intended to be used to demonstrate an effect that occurs in the spectra of atoms called the Zeeman effect. The Zeeman effect equipment will be used for one of the experiments physics students perform when studying the optical spectra of the elements. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79-00254. Applicant: West Virginia Institute of Technology, Montgomery, West Virgin a 25136. Article: Mobile Solar Test Facility (MSTF-1) and Accessories. Manufacturer: Solafrin Products, Canada. Intended use of article: The article is intended to be used to measure the amount of solar energy that can be absorbed by different types of collectors. The courses in which the article will be used are Experimental methods and Energy Conversion. The Experimental Methods course is a laboratory course where the student is familiarized with methods of measuring phenomena such as: temperature—using thermocouples, thermometers, and thermisters; pressure distribution in a nozzle; properties of steam; performance of a low pressure boiler; orsat analysis; air conditioning devices, and absorption of solar energy. The Energy Conversion Course is a lecture course which includes a laboratory period. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79-00255. Applicant: University of Arkansas, 325 Administration Building, Fayetteville, AR 72701. Article: Electron Microscope, Model JEM-100CX with Side Entry Goniometer and Accessories.

Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to study the structure and function of biological cells and tissues. Included among these will be normal as well as diseased cells or tissues of various animals, plants, and insects; the supramolecular structure of various virus particles; serial sections of virus-induced inclusion bodies; and ultrastructural sytochemistry of diseased cells. Studies of pathogen-specific cytopathological structures and/or inclusion bodies which can be used then as a diagnostic tool are sample objectives that will be pursued. The article will also be used in the course "Introduction to Electron Microscopy" which introduces students to standard preparative techniques for both scanning and transmission electron microscopy. The emphasis is practical, with students preparing and examining their own material throughout the course. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00256. Applicant: United States Department of Agriculture, SEA, AR, ASI, Reproduction Laboratory, Bldg. 177B, BARCEAST, Beltsville, Maryland 20705. Article: H–5010 Double Deflection Scanning Attachment. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is to be a part of an electron microscope which will be used to cytologically examine biological tissues from agricultural research experiments. These research problems, which pertain to food and fiber production, include cytological examinations of sperm transport and storage in farm animals, host-parasite interactions involving crop plants and parasitic nematodes, toxonomic studies, gaining a cytological explanation for mastitis in cattle, etc. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00257. Applicant: Cornell University Medical College, 1300 York Avenue, New York, N.Y. 10021. Article: Accessories for Free-Flow Electrophoresis Apparatus, Model FF5. Manufacturer: Bender and Hobein, West Germany. Intended use of article: The articles are accessories to existing electrophoresis apparatus for use in experiments carried out on the isolated membrane populations (kidney brush-border and basolateral membranes). The phenomena studied will include transport properties of brush-border and basolateral membranes for organic anions, i.e. citrate, urate, para-aminohippurate. Kidney cells are ruptured by homogenization and the membranes isolated by centrifugation. The membrane suspension is injected into the free-flow electrophoresis apparatus which separates and isolates the two populations. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00258. Applicant: Massachusetts Institutes of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Nuclear Magnetic Resonance Spectrometer; Model JNM/FX–60Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of organic compounds and organometallic substances either synthesized in the laboratories, or obtained from natural sources. The ^{13}C and proton nmr spectra of the above materials will be obtained for the purposes of elucidating their structures and/or chemical properties. Specific projects to be undertaken include: (1) Synthesis of Metabolic Intermediates, (2) Synthesis of Anticancer Agents, (3) Isolation, Structure Elucidation and Synthesis of Food Borne Mycotoxins, (4) Synthesis of the Antitumor Antibiotic, Bleomycin, (5) Synthesis of Molecular Cages, (6) Synthesis of Natural Products of Interest to Medicine, (7) Investigations on Azo Dioxide-Nitrosoalkane Equilibria, (8) (Investigations of Azoxy Compounds, (9) Synthesis of the Antitumor Antibiotic, Bleomycin, (10) Synthesis of *sym*-Oxepin Oxides, (11) Synthesis of Biological Oxidations: Flavin Derivatives, and (12) Studies of Molecular Complexation. The article will also be used to teach the application of various nmr techniques for the determination of molecular structure and for the indentification of unknown organic compounds in the course Chemistry 5.56, Special Topics in Organic Chemistry: Interpretation of Carbon–13 NMR Spectra. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00259. Applicant: State University of New York at Stony Brook, Department of Surgery, Health Sciences Center, Stony Brook, New York 11794. Article: Gammacell 40 Irradiation System. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use of article: The article in intended to be used for basic and clinical research and clinical application. For basic research the article will be used for total body irradiation of small laboratory animals (mice, rats) followed by bone marrow grafting and detailed follow-up of recovery. For clinical research, the article will be used for irradiation of peripheral blood lymphocytes which are then used as stimulator cells in the so-called one-way mixed lymphocyte culture. Experiments will be conducted to obtain better matching for tissue and organ transplantation in humans; and to find the optimal condition for recovery from lethal irradiation in small animals. These data can later be used for bone marrow transplantation in man. The article will also be used for advanced training in the field of immunobiology. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00260. Applicant: Electric Power Research Institute, Inc., P.O. Box 10412, Palo Alto, California 94303. Article: Air Pollution Control Device for Coal-Fired Utility Boiler. Manufacturer: Kawasaki Heavy Industries Ltd., Japan. Intended use of article: The article is intended to be installed in an operating pulverized coal fired power plant for use in the study of the effect of the ammonia based catalytic reduction technology in reducing NOx emissions from such a coal fired plant. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00261. Applicant: The Ohio State University, Department of Pharmacology, 5086 Graves Hall, 333 W. 10th Avenue, Columbus, Ohio 43210. Article: Double Focusing High Resolution Gas Chromatograph/Mass Spectrometer System, Model MAT 311A and Accessories. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used to perform studies of a variety of endogenous and exogenous organic compounds in biological fluids (urine, blood, cerebrospinal fluid, and tissues) from man and animal. The experiments to be conducted will include the following: (1) Mapping of the contents of the cerebrospinal fluid and identification and quantification of abnormal constituents, (2) Analysis of blood and tissue in a similar way, (3) Investigations of functional changes in cellular processes, which will bring mass spectrometric analysis down to the cellular level, and (4) Study of turn-over rates and metabolism of some endogenous compound labeled with stable isotopes. The article will also be used in courses 794 Pharmacology: Biomedical Mass Spectrometry and Chromatography and 999 Pharmacology: Dissertation Research for demonstration of the different techniques and principles, training in the operation of the system and use of the system in solving research problems. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00262. Applicant: University of Kentucky, Plant Pathology

Department, S–305 Agricultural Science Center, N., Lexington, Kentucky 40546. Article: Electron Microscope, Model EM 400 and Accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the study of the ultrastructural aspects of plant pathogensis. Pathogenic agents to be studied will include fungi, bacteria and viral pathogens of plants and toxins produced by these pathogens. Experiments will involve analysis of the sequence of events during infection of plants by pathogens and host responses to infection including changes in cells, subcellular organelles, and membranes. Application received by Commissioner of Customs: April 17, 1979.

Docket No. 79–00263. Applicant: National Naval Medical Center, Department of Pathology, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 10B and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of the ultrastructure of diseased cells and tissues. Experiments will be conducted on diseased material to determine if there is any alteration from the normal morphology. Both qualitative measurements are to be used. Morphometric analysis of cell and organelle dimensions will serve as a basis of comparison. In addition, the article will be used in a residency training course in the Department of Pathology designed to (1) familiarize residents with the most up to date procedures and instrumentation available for diagnostic electron microscopy, (2) train residents in the basic operation of the electron microscope, (3) teach residents the skill of interpreting the information available in electron micrographs, (4) review the basic ultrastructure of normal and diseased states of specific cells tissues. Application received by Commissioner of Customs: April 19, 1979.

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

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–17164 Filed 6–1–79; 8:45 am]

BILLING CODE 3510–25–M

University of Pennsylvania, Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A Copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666–11th Street, N.W. (Room 735) Washington, D.C.

Docket No. 79–00099. Applicant: University of Pennsylvania, Dept. of Metallurgy and Materials Science, Laboratory for Research on the Structure of Matter–K1, 3231 Walnut St., Philadelphia, PA 19104. Article: (2) Two of HPT2—High Precision Translator with Tilt Capability, and (2) Two RD2–S—High Precision Rotary Drive with Axial Motion Capability. Manufacturer: Vacuum Generators Ltd., United Kingdom. Intended use of article: The article is intended to be used in the investigation of segregation of impurity and alloying elements, to free surfaces of oriented single crystal and polycrystalline iron and nickel. The investigations will include both time dependent and equilibrium aspects of segregation. Single crystal experiments will consist of a comparison of low energy electron diffraction data (LEED) and Auger electron spectra (AES) of surfaces after sulfur segregation from the bulk with similar data on surfaces after gas phase adsorption of sulfur. Similar comparisons on other impurity elements for which suitable gas phase species can be found will also be conducted. In the polycrystals experiments, the applicant will combine segregation studies by scanning Auger microscopy with direct observations by optical, X-ray, and electron microscopy. High purity oriented single crystals will be doped with pairs of alloying elements and used in ternary cosegregation studies. The articles will also be used routinely by several Ph.D. candidates in persuance of the thesis research necessary for the Ph.D. degree.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket Number 78–00135 which was denied without prejudice to resubmission for informational deficiencies. The foreign article provides 0.005 millimeter resolution in three axes (X,Y, and Z). The National Bureau of Standards advises in its memorandum dated April 11, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–17165 Filed 6–1–79; 8:45 am]

BILLING CODE 3510–25–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Change in Meeting Date

The meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee scheduled for Wednesday, June 13, 1979, has been rescheduled for Monday, June 11, 1979, at 9:00 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, NW, Washington, D.C. The agenda and other information relating to the Committee meeting, as published in the **Federal Register** (44 FR 30710) on Tuesday, May 29, 1979, remain unchanged.

Dated: May 30, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration, Bureau of Trade Regulation.

[FR Doc. 79–17220 Filed 6–1–79; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Public Hearings on Draft Environmental Impact Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) prepared on the Proposed Elkhorn Slough Estuarine Sanctuary.

The hearing will begin at 7:30 p.m. on Wednesday, June 20, 1979. It will be held in the Monterey City Council Chambers at Pacific and Madison Streets in Monterey, California.

The views of interested persons and organizations on the adequacy of the impact statement and the proposed

Elkhorn Slough Estuarine Sanctuary, are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/634–4253), so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a first-come, first-served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of his/her statement. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentations. No verbatim transcript of the hearing will be prepared; but staff present will record the general thrust of the remarks. As part of NOAA review of the Proposed Estuarine Sanctuary, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at this hearing, as well as written statements submitted to, and received by OCZM on or before June 26, 1979. As part of the procedures leading toward designation of this sanctuary, a Final Environmental Impact Statement, reflecting consideration of these comments, will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: May 29, 1979.

R. L. Carnahan,

Acting Assistant Administrator for Administration.

[FR Doc. 79-17187 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-08-M

South Atlantic Fishery Management Council Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), will meet to solicit information and discuss a gear conflict issue in the Ft. Pierce, Florida are relative to the King and Spanish Mackerel Fishery Management Plan.

DATES: The meeting will convene on Tuesday, June 19, 1979, at 9 a.m. and adjourn at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the County Civic Center, 25th and Virginia Streets, Ft. Pierce, Florida.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407. Telephone: (803) 571–4366.

Dated: May 29, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17182 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), will meet to: (1) Review status reports on development of fishery management plans (FMP's); (2) consider foreign fishing applications, if any; (3) conduct other fishery management business; and (4) hold a public comment period, July 10, 1979, from 1:30 p.m. to 5 p.m., on the proposed changes to the draft FMP for Reef Fishes.

DATES: The meeting will convene on July 10, 1979, at 1:30 p.m.; July 11, 12, & 13, 1979, at 8:30 a.m.; adjourning on July 10, 11, & 12, 1979, at 5 p.m. and on July 13, 1979, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place in the Grand Ballroom of the Casa Marina Resort, Reynolds Street on the ocean, Key West, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228–2815.

Dated: May 30, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17284 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council Inter-Council Billfish Steering Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Inter-Council Billfish Steering Committee, established under Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), will meet to review the Billfish Fishery Management Plan.

DATES: The meeting will convene on Friday, June 8, 1979, at 9 a.m. and will adjourn at 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Ramada Inn, 845 North Central Avenue, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 308, Charleston, South Carolina 29407, Telephone: (803) 571–4366.

Dated: May 30, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79- 17283 Filed 6-1-79; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will meet in open session on Thursday, June 28, 1979 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. 23 May 1979.

Charles H. Atherton,

Secretary.

[FR Doc. 79-17175 Filed 6-1-79; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel (Signal Corps Female Telephone Operators Unit (WW I))

May 23, 1979.

In accordance with Pub. L. 95–202, Section 401 (The G. I. Bill Improvement Act of 1977), and under the provisions of DODD 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel, the Secretary of Defense determined on May 15, 1979, that the service of the Signal Corps Female Telephone Operators Unit (WW I), whose service encompassed the

period November 28, 1917 through June 30, 1919, shall be considered active military service in the Armed Forces of the United States for purposes of all laws administered by the Veterans Administration. Individual members of the Signal Corps Female Telephone Operators Unit (WW I) may submit applications to the Department of the Army, Commander, U.S. Army Reserve Components Personnel and Administrative Center (Attn: PSD), 9700 Page Boulevard, St. Louis, MO 63132. Applications may be prepared using DD Form 2168 or in narrative form. Applications on behalf of individuals who are deceased or incompetent must be accompanied by legal proof of death or incompentency. Applications should include any supporting material or evidence of membership and character service performed which supports the individual claim of membership in the Signal Corps Female Telephone Operators Unit (WW I).

For further information contact: Captain Mary C. Pruitt, USAF, telephone: 694–5204 or 694–5074 Office of the Secretary of the Air Force (Personnel Council), (SAF/MIPC), The Pentagon, Washington, DC 20330.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 17241 Filed 6–1–79; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant; Supplemental Notice in Connection With Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of public hearings on the draft environmental impact statement (DEIS).

SUMMARY: The Department of Energy (DOE) announces specific information regarding the dates, places, and procedures for the public hearings on the draft environmental impact statement, DOE/EIS–0026–D, Waste Isolation Pilot Plant (April 1979), on the pending proposal to design, construct and operate a licensed waste isolation pilot plant (WIPP) for the permanent disposal of radioactive transuranic nuclear wastes (TRU), for research and development on various high level waste forms in a mined repository, and for a disposal demonstration in an intermediate scale facility (ISF) of up to a thousand spent fuel assemblies from commercial nuclear power reactors. A notice of the availability of the DEIS and general information on the public hearings was published on April 18, 1979 (44 FR 23117).

DATES: Hearings will be held on the dates and times indicated.

Idaho Falls, Idaho—June 5, 1979, 7:00 p.m.–10:00 p.m.

Albuquerque, New Mexico—June 7, 1979, 9:00 a.m.–5:00 p.m.; and 7:00 p.m.–10:00 p.m. June 8, 1979, 9:00 a.m.–4:00 p.m.

Carlsbad, New Mexico—June 9, 1979, 10:00 a.m.–3:00 p.m.

LOCATIONS: Hearings will be held at the following locations indicated.

Intermountain Science Experience Center (INTERSEC), 1776 Science Center Drive, Idaho Falls, ID 83401.

Albuquerque Convention Center, 401 Second St., NW., Albuquerque, NM 87103.

Rodeway Inn, 3804 National Park Highway, Carlsbad, NM 88220.

FOR FURTHER INFORMATION CONTACT:

Mr. Eugene Beckett, WIPP Project Leader, Department of Energy, MS B–107, Washington, DC 20545, 301–353–3253.

Dr. Robert J. Stern, Director, NEPA Affairs Division, Department of Energy, MS E–201, Washington, DC 20545, 202–376–5998.

Mr. Stephen H. Greenleigh (Acting), Assistant General Counsel for Environment, Forrestal Building, MS 6A–152, Department of Energy, Washington, DC 20585, 202–252–6947.

Mr. Ben E. McCarty, Public Affairs Officer, Forrestal Building, MS 8G–031, Department of Energy, Washington, DC 20585, 202–252–4296.

Mr. Don Schueler, Project Manager, WIPP Project Office, Department of Energy, Albuquerque, New Mexico 87115, 505–766–3884.

SUPPLEMENTARY INFORMATION:

I. Previous Notices

The Department of Energy published a notice of intent (43 FR 30331) on July 14, 1978, regarding the preparation of a DEIS on a proposed waste isolation pilot plant and soliciting comments as to the scope and content of that document. The notice of intent indicated that the proposed facility was being considered for siting in Eddy County, New Mexico. The Department of Energy published a notice of availability of the DEIS (44 FR 23117) on April 18, 1979. The notice of availability provided general information on the public hearings.

II. Background for the Proposed Project

The role of the proposed project in the Nation's overall program has been examined by an interagency review group (IRG) whose report to the President was issued in March 1979 (TID–29442).

The DEIS examines the WIPP proposal in light of the policy recommendations contained in the IRG report and compares the environmental impacts of a WIPP reference case with other program and site alternatives.

III. Purpose of the EIS

The Department of Energy intends to use the WIPP EIS as the environmental input into future decisions concerning the proposed WIPP project. These include, but are not limited to, withdrawal of Federal and State land at the Eddy County site; moving into full detailed design and construction of the reference repository, including selection of a construction contractor and long lead-time equipment procurement; and submission of a comprehensive license application to the NRC, should licensing be authorized by the Congress.

IV. Comment Procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to Federal, State and local agencies, organizations, and individuals known to be interested in the WIPP proposal. Additional copies may be obtained from the following locations.

WIPP Project Office, Department of Energy, MS B–107, Washington, DC 20545, 301/353–3253.

WIPP Project Office, Department of Energy, Albuquerque, New Mexico 87115, 505/766–3884.

Copies of the DEIS are also available for public inspection at:

Public Reading Room, FOI, Room GA–152, Forrestal Building, 1000 Independence Ave., SW, Washington, DC.

Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, New Mexico.

Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.

Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Illinois.

Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.

Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.

Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.

Richland Operations Office, Federal Building, Richland, Washington.

Energy Information Center, 215 Fremont Street, San Francisco, California.

Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Regional Energy/Environment Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado.

Carlsbad Public Library, Public Document Room, 101 South Halagueno Street, Carlsbad, New Mexico.

B. Written Comments

The **Federal Register** Notice of April 18, 1979 invited interested parties to submit written comments with respect to the DEIS to the WIPP Project Office at the Washington, DC address listed above. Comments should be identified

on the outside of the envelope and on the documents submitted to DOE with the designation "Draft EIS on WIPP." All comments and related information should be received by DOE by July 6, 1979 in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

C. Conduct of Hearings

1. Public hearings on the draft statement will be held in Idaho Falls, Idaho on June 5, 1979; in Albuquerque, New Mexico on June 7–8, 1979; and in Carlsbad, New Mexico, on June 9, 1979 to receive oral presentations from interested persons. Hearings may be held at other locations as apppropriate. A DOE official has been designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. The presiding officer will be assisted by a panel. The procedure for requesting opportunity to make oral presentations at the hearing was announced in the notice of availability (44 FR 231177) on April 18, 1979. That notice provided that written requests for an opportunity to make an oral presentation should be submitted by May 18, 1979. A portion of the hearings will be reserved for statements from the audience from persons who have not formally requested an opportunity to make an oral statement.

2. DOE reserve the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer.

The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

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

A transcript of the hearings will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 am and 4:30 pm, Monday through Friday. Additional copies of the complete transcript will also be available at the public document centers noted above. Any person may purchase a copy of the transcript from the reporter.

Dated at Washington, D.C. this 31st day of May, 1979.

For the United States Department of Energy.

Ruth C. Clusen,

Acting Assistant Secretary for Environment.

[FR Doc. 79-17401 Filed 6-1-79; 9:26 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Leo's-Winstead, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Leo's-Winstead, 6905 Blue Ridge Extension, Raytown, Missouri 64133. This Proposed Remedial Order charges Leo's-Winstead with pricing violations in the amount of 181,433.86, in sales of the motor gasoline and No. 1 & No. 2 fuel oil during the time period November 1, 1973, through April 30, 1974, in the State of Missouri.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert D. Gerring, District Manager of Enforcement, 324 East 11th Street, Kansas City, Missouri 64106. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, MO, on the 23 day of May 1979.

Lindell J. Williams,

Acting District Manager, Central Enforcement District.

[FR Doc. 79-17282 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Cumberland Basin Projects; Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Notice of Approval on Interim Basis of Cumberland Basin Projects' Rates.

SUMMARY: On May 22, 1979, the Assistant Secretary for Resource Applications under Delegation Order No. 0204–33, 43 FR 60636 (December 28, 1978) confirmed and approved, on an interim basis, Wholesale Power Rate Schedules CR–1–D and CR–2–D for Cumberland Basin Projects' power. The approved rates are contained in Supplemental Agreements between SEPA and its customers dated May 17, 1978, and have been paid by the customers since July 1, 1978. The rates will produce an increase of $2,538,000 in annual revenue, or an increase of approximately 15.8 percent above the rates in effect prior to July 1, 1978. The rates are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

EFFECTIVE DATES: The rates are confirmed and approved on an interim basis as of July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Julian T. Brown, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: Rate Schedule CR–1–D applies to the Tennessee Valley Authority (TVA) and consists of a Basic Annual Charge paid in monthly increments reduced by credits for power retained and sold to customers outside the TVA area. Rate Schedule CR–2–D applies to retained peaking power and/or standby power sold to Big Rivers Electric Corporation; Indiana Statewide Rural Electric Cooperative, Incorporated, Hoosier Energy Division; Southern Illinois Power Cooperative; and East Kentucky Power Cooperative and delivered at the Cumberland Projects or TVA interconnection points. FPC approval of prior rate schedules expired June 30, 1978.

Issued in Washington, DC, May 22, 1979.

George S. McIsaac,

Assistant Secretary Resource Applications.

Department of Energy, Assistant Secretary for Resource Applications

[Rate Order No. SEPA–4]

Southeastern Power Administration—Cumberland Basin Projects Power Rates; Order Confirming and Approving Power Rates on an Interim Basis

May 22, 1979

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, P.L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) 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 develop 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

Contractual Arrangements and Existing Rates. Power from the Cumberland Basin Projects (Wolf Creek, Dale Hollow, Center Hill, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull) is first delivered into the Tennessee Valley Authority (TVA) System. A portion of the power, consisting of 175,000 kilowatts of peaking power and 100,000 kilowatts of standby power, is retained by SEPA and sold to customers located outside the TVA area. The remainder of the power is sold to TVA. Combined power installations of these Cumberland Projects amount to 853,000 kilowatts and will produce an estimated average of 2,920,000,000 kilowatt-hours annually. SEPA's arrangement with TVA provides that TVA pay a basic annual charge, based on inflow to the Wolf Creek Reservoir, payable in monthly increments, and reduced by credits applicable to each type of power and energy retained and sold to other customers.

In 1973, SEPA's arrangements with its customers were amended to accommodate the very sizable expenditures which were anticipated to restore and maintain the integrity of the earthen embankment foundation at the Wolf Creek Dam. The arrangement included a surcharge to regular Rate Schedules CR–1–C and CR–2–C, effective on July 1, 1973, based on cumulative costs expended on the remedial work during succeeding fiscal years of the rate approval period.

On May 17, 1978, SEPA entered into Supplemental Agreements with TVA and each of the Other Customers in which, among other things, the rates which are the subject of this Order were contractually agreed upon, effective July 1, 1978. The contractual rates superseded rates (Schedules CR–1–C and CR–2–C) confirmed and approved by the Federal Power Commission (FPC) on June 29, 1973, and which were effective July 1, 1973, through June 30, 1978.

All contractual arrangements for Cumberland Basin power terminate on June 30, 1983.

Public Notice and Comment. SEPA prepared a Power Repayment Study in March 1978 for the Cumberland Projects which showed that an increase in the then existing rates was necessary to produce revenues sufficient to pay all power costs during the system repayment period as required to meet cost recovery criteria. Based on this Repayment Study, an increase in average annual revenues of approximately $2,500,000 was proposed for the period ending June 30, 1983, an increase of approximately 16 percent.

Additionally, opportunities for public review and comments on the proposed increased power rates were announced by Notice published in the **Federal Register** on April 21, 1978, 43 FR 17043, and all customers were notified by mail. A public meeting was held in Nashville, Tennessee, on May 16, 1978, where an opportunity for oral presentation of views was afforded. Written comments were invited by the Notice through May 19, 1978. A transcript of the public meeting was made.

Attendance at the public meeting was limited. No oral presentations were made and no written comments were received.

Subsequent Action by the Economic Regulatory Administration (ERA). On June 2, 1978, a request was made to ERA for confirmation and approval of the increased rates, supported by the March 1978 Repayment Study and other supporting data. While some additional data was requested of SEPA and furnished, no meetings were held with ERA. ERA received no written comments from any source nor did anyone request a public hearing.

Based on its assessment of the data supporting the June 2, 1978, request, ERA, by Order Issued December 29, 1978, 44 FR 1444, disapproved the rates as being higher than necessary to recover the cost of producing and transmitting power and energy estimated to be generated at the Cumberland Projects over a 50-year repayment period. On December 28, 1978, the Secretary issued Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636, transferring the authority to confirm and approve Federal rates to the undersigned and the Federal Energy Regulatory Commission.

Discussion

System Repayment. In April 1979, SEPA prepared a revised Repayment Study in which certain interest costs which had been deferred for payment until fiscal year 2011 were moved forward for payment beginning in fiscal year 1979. Specifically, in a settlement of agencies' differences reached in 1964, the difference between 2.0 percent and 2.5 percent interest rate on the Wolf Creek, Center Hill, and Dale Hollow power investments for the period prior to fiscal year 1965 were capitalized and deferred for payment beginning in fiscal year 2011. FPC's acceptance of this practice was first contained in its Order of December 23, 1964, confirming and approving Cumberland rates, Docket No. E–7188, and continued in 1968 and 1973 Orders in the same Docket. Irrespective of SEPA's past practice with respect to this deferred interest and FPC's acceptance thereof, the change in SEPA's April 1979 Repayment Study is desirable and consistent with present repayment practices.

The April 1979 Repayment Study indicates that the previously determined increased revenue level was both adequate and necessary. The adjusted rates contained in SEPA's May 17, 1978, Supplemental Agreements with its customers and reflected in Rate Schedules CR–1–D and CR–2–D will produce revenues adequate to recover all system power costs including increased costs resulting from the Wolf Creek Project foundation problems (while eliminating the previously existing surcharges for such costs) and increased operation and maintenance and marketing costs and increased costs for additions and replacements. The rates produce an increase of $2,538,000 in annual revenue, or an increase of 15.8 percent above the rates in effect before July 1, 1978. Projected annual revenues will total $18,650,000 with the rate increase.

Rate Design. The rate design here employed is the same as has existed since 1963. The TVA rate schedule involves a basic annual charge to which is applied retention credits applicable to Cumberland power retained and sold to the Other Customers outside the TVA System. The Other Customers' rate schedule includes charges for Peaking, Standby, and Excess Capacity, and for Peaking, Standby (maintenance and emergency), and Excess Energy. When applied to the available product, the rates will recover the total costs required to be recovered from power revenues as demonstrated by the April 1979 Repayment Study.

Environmental Impact. SEPA has reviewed the possible environmental impacts of the rate adjustments under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Price Stability. SEPA is a "Government enterprise" within the meaning of the price standards of the President's Council on Wage and Price Stability. The rate increase approved herein complies with the operating margin limitation of these standards because the revenues will be only those necessary to cover the Government's costs and expenses.

Availability of Information. Information regarding these rates including studies, public meeting transcript, and other supporting

material are available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Submission to the Federal Energy Regulatory Commission. The rates herein confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period ending no later than June 30, 1983.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I find the rates contained in the hereinbefore referenced Supplemental Contracts both adequate and necessary and hereby confirm and approve on an interim basis, as of July 1, 1978, attached Wholesale Power Rate Schedules CR-1-D and CR-2-D. These rate schedules shall remain in effect on an interim basis through June 30, 1980, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, D.C., this 22nd day of May 1979.

George S. McIsaac,

Assistant Secretary, Resource Applications.

Wholesale Power Rate Schedule CR-1-D

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability: This rate schedule shall be applicable to electric power and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and sold under contract between the Department of Energy and TVA.

Character of Service: The electric power and accompanying energy sold hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Rates: The payments to the Department of Energy by TVA hereunder for availability of capacity and deliveries of energy from the Cumberland Projects are estimated to produce over a period of years an average annual payment of $18,450,000, which amount is hereinafter referred to as the "Basic Annual Charge."

The Basic Annual Charge shall be the applicable annual charge for each year (ending June 30) in which the average unregulated flow of water into Wolf Creek Reservoir as determined hereinafter is between 8,500 and 9,250 c.f.s. To determine the applicable annual charge in other years, the Basic Annual Charge shall be adjusted in accordance with variations in said flow of water as follows: For each 750 c.f.s. or fraction thereof by which said flow of water for the year is greater than 9,250 c.f.s., the applicable annual charge shall be greater by $680,000; for each 500 c.f.s. or fraction thereof by which said flow of water for the year is less than 8,500 c.f.s., the applicable annual charge shall be less by $750,000; *provided,* That the applicable annual charge for any year shall be not less than $15,450,000 nor more than $21,170,000.

Unless otherwise mutually agreed, the annual unregulated flow of water into the Wolf Creek Reservoir will be established from a consideration of the unadjusted discharge registered at Rowena gauging station as determined by the U.S. Geological Survey, adjusted for changes in storage at all reservoirs upstream from said station, in accordance with capacity ratings by the owners thereof, and for other possible factors which may be mutually agreed upon by the parties.

TVA shall pay the applicable annual charge to Energy in monthly installments as follows:

A. For each of the months July through December, the monthly installment payment shall be $1,210,000.

B. For the month of January and for each succeeding month through June, the installment payment for each month shall be the amount computed for that month as follows:

1. The estimated applicable annual charge will first be computed using an estimated average flow for the year determined by combining the inflow from the beginning of the fiscal year through the month for which the installment is being computed with the minimum probable inflow for the remainder of the fiscal year as listed in Table I below opposite the month for which said payment is being computed.

2. The installment payment will then be determined by taking the difference between the estimated applicable annual charge for the fiscal year as determined under 1. and the total of the installment payments for the preceding months in that fiscal year and multiplying said difference by the percentage listed in Table II opposite the month for which the installment payment is being computed.

Month	Table I (Second-Foot Days)	Table II (Percentage)
January	800,000	20
February	700,000	25
March	290,000	30
April	50,000	40
May	7,800	50
June	0	100

C. In the event that the total of the monthly installment payments for any fiscal year exceeds the applicable annual charge for that fiscal year, the excess shall be credited against the monthly installment payments for the succeeding fiscal year.

Credits for Retained Power: the applicable annual charge shall be adjusted as follows to compensate for the retention of Peaking Power, Standby Power, and "special" emergency Standby Power and the transfer of retained power and energy for sale by the Administrator of Southeastern Power Administration to Other Customers. For each Supply Year, beginning November 1, the applicable charges shall be reduced by:

a. $17.88 kw of Peaking Power Base Amount retained by Administrator.

b. $4.86 per kw of the Contract Standby Demand of the Administrator's first Other Customer, plus $3.24 per kw of the sum of the Contract Standby Demands of the second and third Other Customers. For purposes hereof, such "first" Other Customer shall be the one with the largest Contract Standby Demand.

c. 6.4 cents per calendar day (or fraction thereof) per kw of emergency Standby Power used in November, April, May, June, September, and October of each Supply Year, and 9.9 cents per calendar day (or fraction thereof) per kw of the emergency Standby Power used during any other period of the year.

d. 3.26 mills per kwh of energy associated with the Peaking Power Base Amount and of the energy scheduled with the use of maintenance Standby Power.

e. 5.32 mills per kwh of energy scheduled with the use of emergency Standby Power.

f. $25.50 per kilowatt of the maximum amount, if any, by which the capacity used by the Other Customers exceeds the amount of the Cumberland Capacity to which the Administrator is entitled. For purposes of this subsection, the Administrator shall be entitled at any time to the sum of the following:

(1) The total of Peaking Power retained by the Administrator for use at that time by all of the Other Customers, and

(2) If the Administrator at that time is delivering Standby Power to any Other Customer, the Contract Standby Demand of that Customer and any amount that is being retained as "special" emergency Standby Power at that time.

Notwithstanding the foregoing, insofar as such excess consists of excess emergency Standby Power takings, the reduction provided for in this subsection f. shall not apply to the first 100 mw for the first 24 hours of the first four occasions of the emergency excess takings in any Supply Year caused by outages of generating units of the Administrator's Other Customers occurring simultaneously with scheduled outages or other emergency outages.

g. 5.32 mills per kwh of the energy taken in any hour in excess of the amount of energy to which the Administrator is entitled.

During each month of a Supply Year, the monthly installments due shall be reduced by one-twelfth of the sum of the amounts of the annual reductions computed under a. and b. above, and by the sum of the amounts of the reduction computed under c, d, e, f, and g above for the month.

Service Interruption: When delivery of power to TVA is interrupted or reduced due to failure of facilities at any of the Cumberland Projects and whenever such interruption or reduction results in a loss for

a continuous period of more than 31 days of installed capacity (name plate) in excess of 50 megawatts or loss of an entire project, the payments to be made by TVA for the months in which such interruption affects the delivery of power shall be adjusted: *Provided, however,* That no monthly bill will be adjusted until there is a net cumulative monetary credit due TVA. Monthly adjustments will be determined as follows:

a. Adjustments for changes in energy deliveries will be determined by multiplying the change in energy determined by the Administrator to have resulted from the interruption or reduction by 3.16 mills per kilowatt-hour

b. Adjustments for installed capacity losses for each month in which the interruption or reduction occurs for more than half the hours in the month will be determined by multiplying the name plate capacity determined by the Administrator to have been lost as a result of the interruption or the reduction by $0.90 per kilowatt.

July 1, 1978.

Wholesale Power Rate Schedule CR–2–D

Availability

This rate schedule shall be available to the Big Rivers Electric Corporation; Indiana Statewide Rural Electric Cooperative, Incorporated, Hoosier Energy Division; Southern Illinois Power Cooperative; and East Kentucky Power Cooperative (hereinafter individually called Customer; collectively, Customers.)

Applicability

This rate schedule shall be applicable to Peaking Power, Standby Power, and "special" emergency Standby Power, together with accompanying energy generated at the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of 60 cycles per second and shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of the Big Rivers Electric Corporation and the East Kentucky Power Cooperative. The points of delivery to the Big Rivers EC transmission system will be one at 13,800 volts and two at 161,000 volts in the vicinity of the Barkley dam power plant and another point of delivery at 161,000 volts from the TVA transmission system in the vicinity of Paradise, Kentucky. The point of delivery for East Kentucky PC will be at the 161,000 volt bus of the Wolf Creek power plant. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$16.80 per Supply Year for each kilowatt of the Contract Peaking Demand, payable $1.40 per billing month.

$4.26 per Supply Year for each kilowatt of the Contract Standby Demand, payable in equal monthly installment payments of one-twelfth of the annual charge.

$0.064 per calendar day (or fraction thereof) per kw of Standby Power delivered for emergency purposes in November, April, May, June, September, and October of each Supply Year, and $0.099 per calendar day (or fraction thereof) per kilowatt of the Standby Power delivered for emergency purposes during any other period of the year.

Whenever a Customer's use of standby capacity for emergency outage is reduced during a day because of emergency outage of another or other Customers, the Customer first using emergency standby capacity shall pay the daily use charge to the extent of his maximum usage. Other Customers shall pay a daily use charge that day only to the extent that they cause a higher maximum to be established. A Supply Year is a year beginning November 1.

Energy Charge

4.20 mills per kilowatt-hour for all Peaking Energy.

3.26 mills per kilowatt-hour for all maintenance Standby Energy.

5.32 mills per kilowatt-hour for all emergency Standby Energy.

"Special" Emergency Standby Power

"Special" emergency Standby Power from the Cumberland capacity can be made available by the Government to any particular Customer for periods of not less than one week. Any such amounts of power so made available and bought by said Customer shall be at rates as agreed upon by the operating representatives of the parties prior to commencing delivery.

Billing Month

The billing month of power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Standby Capacity and Peaking Capacity and the associated Standby Energy and Peaking Energy sold to Customers under this rate schedule shall come exclusively from capacity and energy available from the Cumberland Projects and retained by the Administrator. Standby Capacity shall be used be Customers only to replace loss of generation on their systems because of maintenance and/or emergency outages of their generating equipment. Maintenance outages shall be a matter of coordination between the Government and the Customers.

The rates and charges for Standby Capacity purchased are predicated upon the purchase of such capacity by three customers.

Each Customer is prohibited from using in any supply year any Standby Capacity and Peaking Capacity in excess of the capacity to which it is entitled. Should the power used by any individual Customer exceed the capacity to which it is entitled in any sixty (60) consecutive minute period in any Supply Year, such Customer shall pay the Government $25.50 per kilowatt of the largest such excess occurring during that year through the current billing period. Notwithstanding the foregoing, insofar as such excess consists of emergency Standby Power takings by a Customer caused by outages of generating units of any of the three Customers occurring simultaneously with scheduled outages or other emergency outages, the payment provided herein shall not apply to the first 100 mw for the first 24 hours of the first four occasions of the emergency takings in any Supply Year: *provided,* That the first four occasions provided herein are a total for the three Customers and will be applied to the first four excess emergency takings by the Customers in the order of their occurrence. Each Customer shall also pay the Government 5.32 mills per kilowatt-hour for Standby Energy taken in any hour in excess of the amount of energy to which such Customer is entitled.

The terminal equipment required for delivery of power at the Barkley switchyard will be furnished by the Government, and the terminal equipment required at any other points of delivery agreed upon with Big Rivers will be furnished by Big Rivers. The costs of the terminal equipment required for delivery of power at the Wolf Creek power plant to East Kentucky shall be borne by the Government.

Unless otherwise agreed, the interconnected electric systems of the Customers and the system of TVA shall be operated in parallel and such Customers shall not interconnect their respective systems with other power systems that are normally operated in parallel with TVA's system.

Service Interruption

When capacity made available and sold under this rate schedule is reduced or interrupted for sixty (60) minutes or longer and such reduction or interruption is not due to conditions on the individual Customer's system, (a) the monthly demand charge for Standby Capacity for the billing month shall be reduced for billing purposes for each hour (the nearest number of whole hours) that such capacity is reduced or interrupted, by an amount equal to one-twelfth of the annual charge divided by the number of hours in the billing month times the reduction, in kilowatts, of such capacity, (b) the monthly charge for Peaking Capacity for the billing month shall be reduced for billing purposes, for each hour (the nearest number of whole hours) that such capacity is reduced or interrupted, by an amount equal to $1.40 divided by the number of hours in the billing month times the reduction, in kilowatts, of such capacity, and (c) the amount of Peaking Energy which such Customer had scheduled but did not receive on the day or days of interruption may be rescheduled and taken

by such Customer not later than the close of the then current Supply Year.

July 1, 1978.

[FR Doc. 79-17281 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP77-55, RP77-54, RP76-10 (PGA77-5), and RP74-61 (PGA77-5)]

Arkansas Louisiana Gas Co.; Granting Extension of Time

May 25, 1979.

On May 15, 1979, Commission Staff Counsel filed a motion for extension of time to file briefs on the initial decision issued in this proceeding on April 26, 1979. Briefs on exceptions are due on May 29, 1979 under 18 CFR §§ 1.13(a) and 1.31(a) contrary to the motion's statement that such briefs are due on May 25. The motion states that additional time is needed because of Staff's recent assignment to the case and that the parties contacted by staff have no objection to the request.

Upon consideration, notice is hereby given that an extension of time for filing briefs on exceptions is granted to and including June 18, 1979. Briefs opposing exceptions shall be filed on or before July 9, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17193 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CI73-293]

Belco Petroleum Corp.; Application To Amend Pending Petition To Amend

May 16, 1979.

Take notice that on April 27, 1978, Belco Petroleum Corporation ("Belco"), filed an application to amend the pending petition to amend the certificate issued to it in Opinion No. 659, as amended, pursuant to the optional certificate procedure. Belco in its application to amend its petition to amend requests that the effective date of the proposed amendment, if granted, be January 1, 1979 or, in the alternative, that the period during which exploration and development expenditures can be made, prior to any refund liability, be extended six months to April 27, 1984. Belco also has requested that the application to amend its petition to amend be considered by the Commission at the same time that it considers Belco's petition to amend the certificate.

In view of the circumstances, as outlined in Belco's application to amend, it is appropriate to shorten the period for comments or protest on the application to amend to ten (10) days. Any person desiring to be heard or to make any protest with reference to said application to amend, on or before May 25, 1979, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 C.F.R. 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 17194 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Belco Petroleum Corp., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 25, 1979.

On May 14, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior, Geological Survey

FERC Control Number: JD79-4797
API Well Number: 4903520464
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: Federal 7-17 20464
Field: Big Piney La Barge 5-8-79 plc
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: NA

FERC Control Number: JD79-4798
API Well Number: 4903520461
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: Federal 6-17 20461
Field: Isenhour
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: NA

FERC Control Number: JD79-4799
API Well Number: 4903520427
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: Federal 5-17 20427
Field: Isenhour
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: NA

FERC Control Number: JD79-4800
API Well Number: 177124008200D2
Section of NGPA: 102
Operator: CNG Producing Company
Well Name: A-4D2
Field: NA
County: NA
Purchaser: Consolidated Gas Supply Corporation
Volume: **730 Gross
*219 CNG WI MMcf.

FERC Control Number: JD79-4801
API Well Number: 1770840280D1
Section of NGPA: 102
Operator: Director Regulatory Affairs Continental Oil Co.
Well Name: South Marsh Island 108, G-6
Field: NA
County: NA
Purchaser: Michigan Wisconsin Pipeline
Volume: .1,750 MMcf.

FERC Control Number: JD79-4802
API Well Number: 117124010200D1
Section of NGPA: 102
Operator: CNG Producing Company
Well Name: A-9D1
Field: NA
County: NA
Purchaser: Consolidated Gas Supply Corp.
Volume: **125 Gross
*38 CNG WI MMcf.

FERC Control Number: JD79-4803
API Well Number: 177124007400D2
Section of NGPA: 102
Operator: CNG Producing Company
Well Name: A-2D2
Field: NA
County: NA
Purchaser: Consolidated Gas Supply Corp.
Volume: *1500 Gross
*450 CNG WI

FERC Control Number: JD79-4804
API Well Number: 177040191D1
Section of NGPA: 102

Operator: Director Regulatory Affairs, Continental Oil Co.
Well Name: West Cameron 66 B–6
Field: NA
County: NA
Purchaser: Tennessee Gas Pipeline Co.
Volume: .1090 MMcf.

FERC Control Number: JD79–4805
API Well Number: 1770840310S1
Section of NGPA: 102
Operator: Dir. Reg. Affairs Continental Oil Co.
Well Name: South Marsh Island 108, G–8
Field: NA
County: NA
Purchaser: Michigan Wisconsin Pipeline
Volume: .1,330 MMcf.

FERC Control Number: JD79–4806
API Well Number: 427084004900S1
Section of NGPA: 102
Operator: Dir. Reg. Affairs Continental Oil Co.
Well Name: High Island 110, A–8
Field: NA
County: NA
Purchaser: Texas Eastern Transmission Co.
Volume: 2,083 MMcf.

FERC Control Number: JD79–4807
API Well Number: 1770340113D2
Section of NGPA: 102
Operator: Dir. Reg. Affairs Continental Oil Co.
Well Name: East Cameron 42, B–2D
Field: NA
County: NA
Purchaser: Tennessee Gas Pipeline Co.
Volume: .1,053 MMcf.

FERC Control Number: JD79–4808
API Well Number: 42705400320OS1
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: A–5
Field: NA
County: Brazos
Purchaser: Natural Gas Pipeline Co. of America
Volume: 730 MMcf.

FERC Control Number: JD79–4808
API Well Number: 1770540285
Section of NGPA: 102
Operator: Mobil Oil Exploration & Producing
Well Name: Vermilion Block 215 6A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corporation
Volume: 2,037 MMcf.

FERC Control Number: JD79–4809
API Well Number: 1770540285
Section of NGPA: 102
Operator: Mobil Oil Expl. & Prod. Southeast Inc.
Well Name: Vermilion Block 215, 6A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 2,037 MMcf.

FERC Control Number: JD79–4810
API Well Number: 177134001300D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelton Block 9, 1E
Field: NA
County: NA
Purchaser: Mobil Oil Purchaser Transcontinental Gas P/L Corp.
Volume: 1755 MMcf.

FERC Control Number: JD79–4811
API Well Number: 1770540248
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: OCS –G 3124 #A–4
Field: NA
County: NA
Purchaser: United Gas Pipe Line Co.
Volume: 1,825 MMcf.

FERC Control Number: JD79–4812
API Well Number: 177154027400S1
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: OCS–G 1250, No. C–6
Field: NA
County: NA
Purchaser: Trunkline Gas Co.
Volume: 1800 MMcf.

FERC Control Number: JD79–4813
API Well Number: 1770240338
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: OCS–G 2024, No. A–4
Field: NA
County: NA
Purchaser: Columbia Gas Transmission Corp.
Volume: 2,500 MMcf.

FERC Control Number: JD79–4814
API Well Number: 1770540243
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: OCS –G 3124 #A–2
Field: NA
County: NA
Purchaser: United Gas Pipe Line Co.
Volume: 1,825 MMcf.

FERC Control Number: JD79–4815
API Well Number: 1770540235
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: OCS–G 3124 #A–1
Field: NA
County: NA
Purchaser: United Gas Pipe Line Co.
Volume: 1,460 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17215 Filed 6–1–79; 8:45 am]

BILLING CODE 6450–01–M

Braxton Oil & Gas Corp., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 24, 1979.

On May 15, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia Department of Mines, Oil and Gas Division

FERC Control Number: JD79–4837
API Well Number: 47–007–1083
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Hosey No. 1
Field: Chapel German
County: Braxton
Purchaser: Equitable Gas Company
Volume: 9 MMcf.

FERC Control Number: JD79–4838
API Well Number: 47–007–1095
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Earl Barker No. 2
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–4839
API Well Number: 47–007–1108
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Sears No. 2
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: MMcf.

FERC Control Number: JD79–4840
API Well Number: 47–007–1109
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Clyde Bosley No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 14 MMcf.

FERC Control Number: JD79–4841
API Well Number: 47–007–1110
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Dean No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 113 MMcf.

FERC Control Number: JD79–4842
API Well Number: 47–041–2122
Section of NGPA: 108

Operator: Braxton Oil and Gas Corp.
Well Name: Taylor No. 1
Field: Lorentz
County: Lewis
Purchaser: Equitable Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79–4843
API Well Number: 47–041–1172
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Ross No. 1
Field: Aspinall Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79–4844
API Well Number: 47–007–2125
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Milo No. 1
Field: Lorentz
County: Lewis
Purchaser: Equitable Gas Company
Volume: 9 MMcf.

FERC Control Number: JD79–4845
API Well Number: 47–041–2121
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Linger No. 1
Field: Lorentz
County: Lewis
Purchaser: Equitable Gas Company
Volume: 14 MMcf.

FERC Control Number: JD79–4846
API Well Number: 47–041–2087
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Harper No. 1
Field: Lorentz
County: Lewis
Purchaser: Equitable Gas Company
Volume: MMcf.

FERC Control Number: JD79–4847
API Well Number: 47–021–2836
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Woodford No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 27 MMcf.

FERC Control Number: JD79–4848
API Well Number: 47–059–0795
Section of NGPA: 108
Operator: C. F. Shewey
Well Name: Mingo Oil and Gas Co. Well
Field: Tug River
County: Mingo
Purchaser: Columbia Gas Transmission Corp.
Volume: 5.087 MMcf.

FERC Control Number: JD79–4849
API Well Number: 47–059–0815
Section of NGPA: 108
Operator: C. F. Shewey
Well Name: James and Nannie Dempsey
Field: Pigeon Creek of Tug River
County: Mingo
Purchaser: Columbia Gas Transmission Corp.
Volume: 10.912 MMcf.

FERC Control Number: JD79–4850
API Well Number: 47–085–3485
Section of NGPA: 108
Operator: C.G.G. Oil Company
Well Name: Starr No. 5 RIT 3485
Field: P. D. Starr
County: Ritchie
Purchaser: Consolidated Gas Supply Corp.
Volume: 3.8 MMcf.

FERC Control Number: JD79–4851
API Well Number: 47–085–3516
Section of NGPA: 108
Operator: C.G.G. Oil Company
Well Name: Starr 7 RIT 3516
Field: P. D. Starr
County: Ritchie
Purchaser: Consolidated Gas Supply Corp.
Volume: 1.6 MMcf.

FERC Control Number: JD79–4852
API Well Number: 47–085–3501
Section of NGPA: 108
Operator: C.G.G. Oil Company
Well Name: Starr 6 RIT 3501
Field: P. D. Starr
County: Ritchie
Purchaser: Consolidated Gas Supply Corp.
Volume: 2.4 MMcf.

FERC Control Number: JD79–4853
API Well Number: 47–011–0604
Section of NGPA: 108
Operator: Cabell County Gas Company
Well Name: J. O. Heyser No. 1 F6506
Field: Wayne Cabell
County: Cabell
Purchaser: Southeastern Public Service Co.
Volume: 3 MMcf.

FERC Control Number: JD79–4854
API Well Number: 47–011–0603
Section of NGPA: 108
Operator: Cabell County Gas Co.
Well Name: Aleshire Harvey No. 1
Field: Wayne Cabell
County: Cabell
Purchaser: Southeastern Public Service Co.
Volume: 3 MMcf.

FERC Control Number: JD79–4855
API Well Number: 047–011–0602
Section of NGPA: 108
Operator: Cabell County Gas Co.
Well Name: Bruce Perry No. 1
Field: Wayne Cabell
County: Cabell
Purchaser: Southeastern Public Service Co.
Volume: 3 MMcf.

FERC Control Number: JD79–4856
API Well Number: 047–011–0605
Section of NGPA: 108
Operator: Cabell County Gas Co.
Well Name: Aleshire Harvey No. 2
Field: Wayne Cabell
County: Cabell
Purchaser: Southeastern Public Service Co.
Volume: 3 MMcf.

FERC Control Number: JD79–4857
API Well Number: 047–041–1227
Section of NGPA: 108
Operator: Madison Gas Company
Well Name: Curtis No. 2
Field: NA
County: Lewis
Purchaser: Consolidated Gas and Supply Co.
Volume: 9 MMcf.

FERC Control Number: JD79–4858
API Well Number: 047–007–1122
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Hosey No. 2
Field: Chapel German
County: Braxton
Purchaser: Equitable Gas Co.
Volume: 4 MMcf.

FERC Control Number: JD79–4859
API Well Number: 047–007–1111
Section of NGPA: 108
Operator: Graxton Oil and Gas Corp.
Well Name: Wendel Bosley No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 12 MMcf.

FERC Control Number: JD79–4860
API Well Number: 047–007–1123
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Shock No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 5 MMcf.

FERC Control Number: JD79–4861
API Well Number: 047–007–1131
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: F. Singleton No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 3 MMcf.

FERC Control Number: JD79–4862
API Well Number: 047–007–1079
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Sears No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 18 MMcf.

FERC Control Number: JD79–4863
API Well Number: 047–021–2842
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Miller No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 9 MMcf.

FERC Control Number: JD79–4864
API Well Number: 047–021–2746
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Craddock No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: MMcf.

FERC Control Number: JD79–4865
API Well Number: 047–021–2731
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: McVaney No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 18 MMcf.

FERC Control Number: JD79–4866
API Well Number: 047–021–2727
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Garrett No. 1
Field: Sand Fork

County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 13 MMcf.

FERC Control Number: JD79–4867
API Well Number: 047–007–1082
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Hefner No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 7 MMcf.

FERC Control Number: JD79–4868
API Well Number: 047–021–2579
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Jackson No. 1
Field: Aspinall Finster
County: Gilmer
Purchaser: Equitable Gas Company
Volume: 4 MMcf.

FERC Control Number: JD79–4869
API Well Number: 047–017–1786
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Smith No. 1
Field: Smithon Flint Sedalia Field
County: Doddridge
Purchaser: Consolidated Gas Supply Corp.
Volume: 3 MMcf.

FERC Control Number: JD79–4870
API Well Number: 047–007–1223
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Toms No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 14 MMcf.

FERC Control Number: JD79–4871
API Well Number: 047–007–1207
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Norman No. 1
Field: Aspinall Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79–4872
API Well Number: 047–007–1205
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Hallanan No. 1
Field: Aspinall Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 17 MMcf.

FERC Control Number: JD79–4873
API Well Number: 047–007–1202
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Toothman No. 1
Field: Aspinall Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79–4874
API Well Number: 047–007–1159
Section of NGPA: 108
Operator: Braxton Oil and Gas Corp.
Well Name: Bragg No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 8 MMcf.

FERC Control Number: JD79–4875.
API Well Number: 47–007–1136.
Section of NGPA: 108.
Operator: Braxton Oil and Gas Corp.
Well Name: Huffman No. 1.
Field: Heaters.
County: Braxton.
Purchaser: Consolidated Gas Supply Corp.
Volume: 13 MMcf.

FERC Control Number: JD79–4876.
API Well Number: 47–007–1117.
Section of NGPA: 108.
Operator: Braxton Oil and Gas Corp.
Well Name: Clyde Bosley No. 2.
Field: Chapel German.
County: Braxton.
Purchaser: Consolidated Gas Supply Corp.
Volume: 6 MMcf.

FERC Control Number: JD79–4877.
API Well Number: 47–007–1116.
Section of NGPA: 108.
Operator: Braxton Oil and Gas Corp.
Well Name: Hefner No. 2.
Field: Heaters.
County: Braxton.
Purchaser: Consolidated Gas Supply Corp.
Volume: 9 MMcf.

FERC Control Number: JD79–4878.
API Well Number: 47–097–994.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Mildred McClain No. 1.
Field: Banks District.
County: Upshur.
Purchaser: Consolidated Gas and Supply Corp.
Volume: 9 MMcf.

FERC Control Number: JD79–4879.
API Well Number: 47–097–853.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Edna McClain No. 1.
Field: Banks District.
County: Upsher.
Purchaser: Consolidated Gas and Supply Co.
Volume: MMcf.

FERC Control Number: JD79–4880.
API Well Number: 47–097–848.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Golden No. 1.
Field: Banks District.
County: Upshur.
Purchaser: Consolidated Gas and Supply Co.
Volume: 9 MMcf.

FERC Control Number: JD79–4881.
API Well Number: 47–097–836.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Nola Shobe No. 1.
Field: Banks District.
County: Upshur.
Purchaser: Consolidated Gas and Supply Company
Volume: 9 MMcf.

FERC Control Number: JD79–4882.
API Well Number: 47–041–1353.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Crawford No. 1.
Field: Collin Settlement District.
County: Lewis.
Purchaser: Consolidated Gas and Supply Co.
Volume: 9 MMcf.

FERC Control Number: JD79–4883.
API Well Number: 47–041–1228.
Section of NGPA: 108.
Operator: Madison Gas Company.
Well Name: Curtis No. 1.
Field: Collin Settlement District.
County: Lewis.
Purchaser: Consolidated Gas and Supply Company
Volume: 9 MMcf.

FERC Control Number: JD79–4884.
API Well Number: 047–043–362.
Section of NGPA: 108.
Operator: Locke and Krebs.
Well Name: Brawley Reid Oil and Gas Co.
Field: NA.
County: Lincoln.
Purchaser: Pennzoil Company.
Volume: 13 MMcf.

FERC Control Number: JD79–4885.
API Well Number: 081–0077.
Section of NGPA: 108.
Operator: Clear Fork Gas Company.
Well Name: Clear Fork No. 2.
Field: NA.
County: Raleigh.
Purchaser: Columbia Gas Transmission Co.
Volume: 8.5 MMcf.

FERC Control Number: JD79–4886.
API Well Number: 081–0071.
Section of NGPA: 108.
Operator: Clear Fork Gas Company.
Well Name: Clear Fork No. 1.
Field: NA.
County: Raleigh.
Purchaser: Columbia Gas Transmission Co.
Volume: 8.5 MMcf.

FERC Control Number: JD79–4887.
API Well Number: 47–43–363.
Section of NGPA: 108.
Operator: Locke and Krebs.
Well Name: Brawley Reid No. 18.
Field: NA.
County: Lincoln.
Purchaser: Pennzoil Company.
Volume: 13 MMcf.

FERC Control Number: JD79–4888.
API Well Number: 47–033–1245.
Section of NGPA: 103.
Operator: James F. Scott.
Well Name: J. N. Swiger.
Field: Eagle.
County: Harrison.
Purchaser: Consolidated Gas Supply Corp.
Volume: 19.9 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a

protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17219 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-309]

Cerro Wire & Cable Co. et al.; Petition for Declaratory Order

May 24, 1979.

Take notice that on May 2, 1979, Cerro Wire & Cable Co., Entenmann's, Inc., Gim Metal Products, Global Steel Products Corporation, Kaiser Aluminum & Chemical Corporation, Knickerbocker Partition Corporation, and Lawrence Aviation Industries, Inc., c/o McGee & Ketcham, 1019 19th Street, N.W., Washington, D.C. 20036, (Buyers), acting severally and not jointly, filed in Docket No. CP79-309 a petition pursuant to Section 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7(c)) for an expedited declaratory order removing uncertainty as to the eligibility of Buyers for a two-year extension of pipeline transportation of natural gas pursuant to Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Buyers state that Transcontinental Gas Pipe Line Corporation (Transco) previously rendered a two-year service pursuant to authorization granted in Docket No. CP77-240, transporting gas from points of supply to Long Island Lighting Company (LILCO), the distribution company serving Buyers' manufacturing plants. Buyers assert that Transco has declined to extend such service for an additional two-year period on the ground that Buyers allegedly are not qualified to receive such service under the requirements of Section 2.79.

Buyers assert that Transco has declined to extend its agreement to transport gas for Buyers on the alleged grounds that: (1) Buyers have stated no valid reason under the Commission's policy as to why Buyers' gas supply is not available to Transco; and (2) curtailments of deliveries would not occur until at least the end of the upcoming summer season. Buyers state that unless the Commission grants such relief promptly, Transco would through delay cause Buyers to lose their contracted gas supply and to be exposed to the risk of substantial economic loss. It is asserted that each of the Buyers is an industrial consumer using natural gas for high priority end uses and each is a customer of LILCO, a gas distribution company, and each has been and would be curtailed by LILCO in the delivery of natural gas for high priority uses.

Buyers submit that before Transco was approached by Buyers for extended transportation service, the subject gas had been freely contracted to Buyers for a term of 6 years and that the affidavits of the producers unequivocally showed that by free choice of the producer-suppliers such gas was not available for sale as interstate supply when the contracts were signed with Buyers. Further, it is asserted that nothing in the Natural Gas Policy Act of 1978 requires an unwilling seller to dedicate or sell his gas supply to an interstate pipeline company. Buyers state that the high priority requirements of each of them have been curtailed by LILCO 100 percent during the 1977-78 and 1978-79 winter periods with substantial curtailment during the intervening summer months. Buyers assert that Transco has found Buyers' showing deficient under the Section 2.79 program and Commission policy because LILCO's affidavit does not project curtailments before the end of the 1979 summer season. However, Buyers allege that it is clear from LILCO's affidavit that, based on present natural gas supply projections, curtailment of Buyers' high priority requirements would be resumed during the 1979-80 winter period, and that the circumstances conform to the Commission's policy statement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17195 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Curtis J. Little, et al.; by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 24, 1979.

On May 16, 1979, the Federal Energy regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior Geological Survey

FERC Control Number: JD79-4978
API Well Number: 30-045-21929
Section of NGPA: 108
Operator: Curtis J. Little
Well Name: No. 2 USA-Gentle
Field: Pinon-Fruitland
County: San Juan County
Purchaser: El Paso Natural Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79-4979
API Well Number: 30-039-21413
Section of NGPA: 103
Operator: Dugan Production Corp.
Well Name: A New Dawn No. 1
Field: Otero Gallup Basin Dakota
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 54 MMcf.

FERC Control Number: JD79-4980
API Well Number: 30-039-05686
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: Anderson B No. 1
Field: Blanco PC South
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 6.3 MMcf.

FERC Control Number: JD79-4981
API Well Number: 30-039-05705
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: J. R. Anderson No. 1
Field: Blanco PC South
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 7.250 MMcf.

FERC Control Number: JD79-4982
API Well Number: 30-039-05841
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: J. R. Anderson No. 2
Field: Blanco PC South
County: Rio Arriba
Purchaser: Northwest Pipeline Corp.
Volume: 5.0 MMcf.

FERC Control Number: JD79-4983
API Well Number: 30-045-22637
Section of NGPA: 103
Operator: Dugan Production Corp.

Well Name: Designated Hitter No. 1
Field: Waw Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 50. MMcf.

FERC Control Number: JD79–4984
API Well Number: 30–045–22638
Section of NGPA: 103
Operator: Dugan Production Corp.
Well Name: Designated Hitter No. 2
Field: Waw Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 20.0 MMcf.

FERC Control Number: JD79–4985
API Well Number: 30–045–21773
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: FAF No. 1
Field: Waw Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 6.0 MMcf.

FERC Control Number: JD79–4986
API Well Number: 30–045–21907
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: FAF No. 2
Field: Waw Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 6.0 MMcf.

FERC Control Number: JD79–4987
API Well Number: 30–045–08867
Section of NGPA: 108
Operator: Dugan Production Corp.
Well Name: Federal I No. 2
Field: Basin DK
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 4.7 MMcf.

FERC Control Number: JD79–4988
API Well Number: 30–039–21346
Section of NGPA: 103
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 6
Field: Ballard Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Co.
Volume: 25.9 MMcf.

FERC Control Number: JD79–4989
API Well Number: 30–043–20269
Section of NGPA: 103
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarrella No. 7
Field: Ballard Pictured Cliffs
County: Sandoval
Purchaser: El Paso Natural Gas Co.
Volume: 24.2 MMcf.

FERC Control Number: JD79–4990
API Well Number: 30–048–20267
Section of NGPA: 103
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarrilla No. 8
Field: Ballard Pictured Cliffs
County: Sandoval
Purchaser: El Paso Natural Gas Co.
Volume: 23.1 MMcf.

FERC Control Number: JD79–4991
API Well Number: 30–043–20268
Section of NGPA: 108
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 9
Field: Ballard Pictured Cliffs
County: Sandoval
Purchaser: El Paso Natural Gas Co.
Volume: 39.9 MMcf.

FERC Control Number: JD79–4992
API Well Number: 30–039–21456
Section of NGPA: 103
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 10
Field: Ballard Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Co.
Volume: 98.9 MMcf.

FERC Control Number: JD79–4993
API Well Number: 30–039–21456
Section of NGPA: 103
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 12
Field: Ballard Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Co.
Volume: 19 MMcf.

FERC Control Number: JD79–4994
API Well Number: 30–039–21711
Section of NGPA: 108
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 1
Field: Ballard Pictured Cliffs
County: Sandoval
Purchaser: El Paso Natural Gas Co.
Volume: 14.0 MMcf.

FERC Control Number: JD79–4995
API Well Number: 30–039–20564
Section of NGPA: 108
Operator: Dave M. Thomas, Jr.
Well Name: Chacon Jicarilla No. 2
Field: Ballard Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Co.
Volume: 1.7 MMcf.

FERC Control Number: JD79–4996
API Well Number: 30039205090000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 29–7 Unit 103
Field: Blanco-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79–4997
API Well Number: 30–039–006567
Section of NGPA: 108
Operator: Consolidated Oil & Gas, Inc.
Well Name: Northwest Federal No. 2–7
Field: Tapacito Pictured Cliffs
County: Rio Arriba
Purchaser: Northwest Pipeline Co.
Volume: 9.125 MMcf.

FERC Control Number: JD79–4998
API Well Number: 4900921303
Section of NGPA: 103
Operator: Champlin Petroleum Company
Well Name: No. 1 Federal 43–11
Field: Dry Fork Area
County: Converse
Purchaser: McCulloch Int. Gas Corp.
Volume: 46 MMcf.

FERC Control Number: JD79–4999
API Well Number: 4903721142
Section of NGPA: 103
Operator: Champlin Petroleum Company
Well Name: No. 25 Desert Springs
Field: Desert Springs
County: Sweetwater
Purchaser: Colorado Int. Gas Co.
Volume: 95 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerninga determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17216 Filed 6–1–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CP75–48]

El Paso Natural Gas Co.; Petition To Amend

May 24, 1979.

Take notice that on April 25, 1979, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP75–48 [1] a petition to amend the order issued November 18, 1974, as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate certain facilities located in Rio Arriba County, New Mexico, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

El Paso states that it has been informed by Northwest Pipeline Corporation (Northwest) that Northwest must lower the operating pressure in a portion of its San Juan Basin gathering system as a result of reservior pressure decline in order to permit continued production into such system. El Paso presently operates a low pressure gathering system in the area and Northwest has required that El Paso receive up to 9,000 Mcf per day of natural gas into its low pressure gathering system for a period of approximately nine months, or until such time that Northwest can lower the pressure in its existing gathering system in conformance with certain contractual

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

obligations between Northwest and Amoco Production Company, it is said. The quantities of gas delivered by Northwest to El Paso would be received by El Paso as balancing gas under the gathering agreement, it is further said.

El Paso asserts that in order to assist Northwest until Northwest can lower the pressure in its existing gathering facilities and further, in order to provide additional flexibility for the delivery of balancing gas, El Paso and Northwest have entered into a letter agreement dated April 2, 1979 providing for the establishment of an additional point of interconnection between the existing gathering systems of El Paso and Northwest as a point for the delivery of balancing gas by Northwest to El Paso under the gathering agreement. Once Northwest lowers the pressure of its gathering system, such new point of interconnection, for operation reasons, shall only be utilized from time to time with the concurrence of both El Paso and Northwest, it is asserted.

The application indicates the following facilities are proposed: an 8⅝-inch O.D. tap valve assembly, with appurtenances, to be located at the intersection of El Paso's existing 16-inch O.D. lateral "2C–21" and Northwest's 12¾-inch O.D. lateral "11–H4" all located in Rio Arriba County, New Mexico.

The estimated total cost of the proposed facilities including overhead, contingency and filing fee is $3,850 and Northwest has agreed to reimburse El Paso for all actual costs incurred in constructing the proposed facilities, it is said.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 FR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17196 Filed 6-1-79; 8:45 am]

BILLING DATE 6450-01-M

Gulf Oil Corp., et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 24, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Geological Survey

FERC Control Number: JD79–5660
API Well Number: 33–053–00763
Section of NGPA: 102
Operator: Gulf Oil Corp.
Well Name: USA 1–12–3C
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 98 MMcf.

FERC Control Number: JD79–5661
API Well Number: 33–053–00763
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: USA 1–12–3C
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 98 MMcf.

FERC Control Number: JD79–5662
API Well Number: 33–053–00689
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: Pete Flovatsky Federal 1–24–3B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 53 MMcf.

FERC Control Number: JD79–5663
API Well Number: 49–037–21005
Section of NGPA: 103
Operator: Texaco Inc.
Well Name: Delaney Rim Unit Well No. 11
Field: Delaney Rim Unit
County: Sweetwater County
Purchaser: Champlin Petroleum Company
Volume: 15 MMcf.

FERC Control Number: JD79–5664
API Well Number: 05–103–8221
Section of NGPA: 103
Operator: Donald C. Slawson
Well Name: Federal 9–1
Field: Cathedral Mancos B
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 100 MMcf.

FERC Control Number: JD79–5665
API Well Number: 05–103–8263
Section of NGPA: 103
Operator: Donald C. Slawson
Well Name: Federal 9–2
Field: Cathedral Mancos B
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 75 MMcf.

FERC Control Number: JD79–5666
API Well Number: 05–103–8264
Section of NGPA: 103
Operator: Donald C. Slawson
Well Name: Federal 9–2
Field: Cathedral Mancos B
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 68 MMcf.

FERC Control Number: JD79–5667
API Well Number: 49–013–20686
Section of NGPA: 102
Operator: Michigan Wisconsin Pipe Line Company
Well Name: Amoco Boysen Tribal No. 1–13
Field: Boysen
County: Freemont
Purchaser: Montana-Dakota Utilities Company
Volume: 360 MMcf.

FERC Control Number: JD79–5668
API Well Number: 05–081–06313
Section of NGPA: 103
Operator: Champlin Petroleum Company
Well Name: Shell Creek No. 4
Field: Sheel Creek
County: Mofat
Purchaser: Colo. Int. Gas Company
Volume: 776 MMcf.

FERC Control Number: JD79–5669
API Well Number: 49–023–20253
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: ELBU 24–5 20253
Field: East Labarge
County: Lincoln
Purchaser: Northwest Pipeline Corporation
Volume:

FERC Control Number: JD79–5670
API Well Number: 49–035–20487
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: FCU 10–8 20487
Field: Fogarty Creek
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume:

FERC Control Number: JD79–5671
API Well Number: 49–035–20421
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: FCU 7–9 20421
Field: Fogarty Creek
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume:

FERC Control Number: JD79–5672
API Well Number: 49–035–30489
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: FCU 9–21 20489
Field: Fogarty Creek
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume:

FERC Control Number: JD79–5673
API Well Number: 05–103–8285
Section of NGPA: 103
Operator: Chandler & Associates, Inc.

Well Name: Fork Unit 14–22–1–2
Field: North Douglas Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 310 MMcf.

FERC Control Number: JD79–5674
API Well Number: 49–005–24433
Section of NGPA: 103
Operator: Diamond Shamrock Corporation
Well Name: Misa Federal 31–18
Field: Hartzog Draw
County: Campbell
Purchaser: Phillips Petroleum Company
Volume: 6 MMcf.

FERC Control Number: JD79–5675
API Well Number: 49–037–20936
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 7
Field: Hay Reservoir
County: Sweetwater
Purchaser: Panhandle Eastern Pipe Line Company
Volume: 180 MMcf.

FERC Control Number: JD79–5676
API Well Number: 49–037–20997
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservoir Unit 8
Field: Hay Reservoir
County: Sweetwater
Purchaser: Colorado Interstate Gas Company
Volume: 1460 MMcf.

FERC Control Number: JD79–5677
API Well Number: 49–045–21237
Section of NGPA: 103
Operator: Davis Oil Company
Well Name: Gordon Federal No. 1
Field: Todd
County: Weston
Purchaser: Phillips Petroleum Company
Volume: 20 MMcf.

FERC Control Number: JD79–5678
API Well Number: 49–019–20325
Section of NGPA: 103
Operator: Davis Oil Company
Well Name: Culp Draw Unit II–24
Field: Hartzog
County: Johnson
Purchaser: Phillips Petroleum Company
Volume: 60 MMcf.

FERC Control Number: JD79–5679
API Well Number: 49–037–21210
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Hay Reservior Unit No. 20
Field: Hay Reservoir
County: Sweetwater
Purchaser: Colorado Interstate Gas Company
Volume: 700 MMcf.

FERC Control Number: JD79–5680
API Well Number: 49–019–20475
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Heldt Draw Unit No. 57
Field: Table Mountain Field
County: Johnson
Purchaser: Phillips Petroleum Company
Volume: 31.8 MMcf.

FERC Control Number: JD79–5681
API Well Number: 49–019–20454
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Heldt Draw Unit No. 55
Field: Table Mountain Field
County: Johnson
Purchaser: Phillips Petroleum Company
Volume: 21.0 MMcf.

FERC Control Number: JD79–5682
API Well Number: 49–019–20453
Section of NGPA: 102
Operator: Davis Oil Company
Well Name: Heldt Draw Unit 54
Field: Table Mountain Field
County: Johnson
Purchaser: Phillips Petroleum Company
Volume: 21.0 MMcf.

FERC Control Number: JD79–5683
API Well Number: 05–103–8008
Section of NGPA: 103
Operator: Chancellor & Ridgeway
Well Name: No. 10–1 Federal
Field: Cathedral NW SW Sec. 10–T3S–R101W
County: Rio Blanco County
Purchaser: Western Slope Gas Company
Volume: 70 MMcf.

FERC Control Number: JD79–5684
API Well Number: 05–103–8010
Section of NGPA: 103
Operator: Chancellor & Ridgeway
Well Name: No. 33–1 Federal
Field: Cathedral NW SW Sec. 33–T2S–R101W
County: Rio Blanco County
Purchaser: Western Slope Gas Company
Volume: 60 MMcf.

FERC Control Number: JD79–5685
API Well Number: 25–071–21575
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1170 1–1170 Federal
Field: Bowdion
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Company, Inc.
Volume: 60 MMcf.

FERC Control Number: JD79–5686
API Well Number: 49–005–24595
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: 2–31 Powell Federal
Field: Hartzog Draw Shannon Sand
County: Campbell
Purchaser: Panhandle Eastern Pipeline Co.
Volume: 4 MMcf.

FERC Control Number: JD79–5687
API Well Number: 49–005–24596
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: 3–31 Powell Federal
Field: Hartzog Draw Shannon Sand
County: Campbell
Purchaser: Panhandle Eastern Pipeline Co.
Volume: 2 MMcf.

FERC Control Number: JD79–5688
API Well Number: 49–005–24663
Section of NGPA: 103
Operator: General American Oil Company of Texas
Well Name: Hartzog Federal No. 2–5
Field: Hartzog Draw Shannon Sand
County: Campbell
Purchaser: Western Gas Processors, Ltd.
Volume: 15 MMcf.

FERC Control Number: JD79–5689
API Well Number: 05–081–6354
Section of NGPA: 103
Operator: Energy Reserves Group, Inc.
Well Name: USA Harry Ptasynski No. 3
Field: Powder Wash
County: Moffat
Purchaser: Mountain Fuel Supply Company
Volume: 350 MMcf.

FERC Control Number: JD79–5690
API Well Number: 49–023–20220
Section of NGPA: 103
Operator: Pacific Transmission Supply Company
Well Name: PTS 14–4 Federal
Field: Fontenelle
County: Lincoln
Purchaser: FMC Corporation
Volume: 234.739 MMcf.

FERC Control Number: JD79–5691
API Well Number: 05–081–6323
Section of NGPA: 103
Operator: Energy Reserves Group, Inc.
Well Name: USA Joyce Wolf No. 3
Field: Powder Wash
County: Moffat
Purchaser: Mountain Fuel Supply Co.
Volume: 256 MMcf.

FERC Control Number: JD79–5692
API Well Number: 33–053–00690
Section of NGPA: 102
Operator: Gulf Oil Corporation
Well Name: USA 1–25–3B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 41 MMcf.

FERC Control Number: JD79–5693
API Well Number: 33–053–00690
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: USA 1–25–3B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 41 MMcf.

FERC Control Number: JD79–5694
API Well Number: 49–023–20222
Section of NGPA: 103
Operator: Pacific Transmission Supply Company
Well Name: PTS 32–10 Federal
Field: Fontenelle
County: Lincoln
Purchaser: Pacific Gas Transmission Company
Volume: 123.439

FERC Control Number: JD79–5695
API Well Number: 05–103–8237
Section of NGPA: 103
Operator: Chancellor & Ridgeway
Well Name: No. 33–2 Federal
Field: Cathedral SW SE Sec. 33–T2S–R101W
County: Rio Blanco County
Purchaser: Western Slope Gas Company
Volume: 108 MMcf.

FERC Control Number: JD79–5696
API Well Number: 49–035–20476
Section of NGPA: 103
Operator: Belco Petroleum Corporation
Well Name: NLBU 26–9 20476
Field: North Labarge Unit
County: Sublette
Purchaser: Northwest Pipeline Corporation

FERC Control Number: JD79–5697
API Well Number: 05–081–6332

Section of NGPA: 103
Operator: Energy Reserves Group, Inc.
Well Name: USA Harry Ptasynski No. 2
Field: Powder Wash
County: Moffat
Purchaser: Mountain Fuel Supply Co.
Volume: 440 MMcf.

FERC Control number: JD79–5698
API Well Number: 05–081–6331
Section of NGPA: 103
Operator: Energy Reserves Group, Inc.
Well Name: USA V. M. Klaenhammer #3
Field: Powder Wash
County: Moffat
Purchaser: Mountain Fuel Supply Co.
Volume: 114 MMcf.

FERC Control Number: JD79–5699
API Well Number: 25 071 21585
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1971 1–1971 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 54 MMcf.

FERC Control Number: JD79–5700
API Well Number: 49–005–24594
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: 1–31 Powell Federal
Field: Hartzog Draw Shannon Sand
County: Campbell
Purchaser: Panhandle Eastern Pipeline Co.
Volume: 13 MMcf.

FERC Control Number: JD79–5701
API Well Number: 25–071 21581
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1961 1–19 SOC Et Al Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 48 MMcf.

FERC Control Number: JD79–5702
API Well Number: 25 071 21582
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 2661 1–26 SOC Et Al Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 120 MMcf.

FERC Control Number: JD79–5703
API Well Number: 25 071 21550
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1061 1–10 USA Wolf & Miami
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 60 MMcf.

FERC Control Number: JD79–5704
API Well Number: 25 071 21580
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 3061 1–30 SOC Et Al Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 72 MMcf.

FERC Control Number: JD79–5705
API Well Number: 25 071 21577
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0571 1–0571 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 36 MMcf.

FERC Control Number: JD79–5706
API Well Number: 25 071 21570
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1871 1–1871 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 60 MMcf.

FERC Control Number: JD79–5707
API Well Number: 25 071 21552
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 3171 1–31 Montana Power
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 72 MMcf.

FERC Control Number: JD79–5708
API Well Number: 25 071 21551
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 3071 #1 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 18 MMcf.

FERC Control Number: JD79–5709
API Well Number: 25 071 21574
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0662 1–0662 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 60 MMcf.

FERC Control Number: JD79–5710
API Well Number: 25 071 21571
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 0671 1–0671 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 12 MMcf.

FERC Control Number: JD79–5711
API Well Number: 25 071 21558
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 1942 #1 Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 12 MMcf.

FERC Control Number: JD79–5712
API Well Number: 49–005–24664
Section of NGPA: 103
Operator: General American Oil Company of Texas
Well Name: Hartzog Federal #1–5
Field: Hartzog Draw Shannon Sandstone
County: Campbell
Purchaser: Western Gas Processors, Ltd.
Volume: 45 MMcf.

FERC Control Number: JD79–5713
API Well Number: 43–013–30441
Section of NGPA: 103
Operator: Diamond Shamrock Corporation
Well Name: Ute 1–33B6
Field: Cedar Rim
County: Duchesne
Purchaser: Koch Oil Company
Volume: 35 MMcf.

FERC Control Number: JD79–5714
API Well Number: 43–013–30492
Section of NGPA: 103
Operator: Diamond Shamrock Corporation
Well Name: Gulf Ute 2–16B2
Field: Bluebell
County: Duchesne
Purchaser: Gary Operating Company
Volume: 19 MMcf.

FERC Control Number: JD79–5715
API Well Number: 49–005–24716
Section of NGPA: 103
Operator: General American Oil Company of Texas
Well Name: Hartzog Federal No. 1–4
Field: Hartzog Draw Shannon Sandstone
County: Campbell
Purchaser: Western
Volume: 50 MMcf.

FERC Control Number: JD79–5716
API Well Number: 49–005–24717
Section of NGPA: 103
Operator: General American Oil Company of Texas
Well Name: Hartzog Federal No. 1–2
Field: Hartzog Draw Shannon Sandstone
County: Campbell
Purchaser: Phillips Petroleum Company
Volume: 12 MMcf.

FERC Control Number: JD79–5717
API Well Number: 49–037–20928
Section of NGPA: 103
Operator: Champlain Petroleum Company
Well Name: No. 5 Higgins 23–22
Field: Higgins
County: Sweetwater
Purchaser: Colo. Int. Gas Co.
Volume: 2800 MMcf.

FERC Control Number: JD79–5718
API Well Number: 25–071–21583
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 2761 1–27 SOC Et Al Federal
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 36 MMcf.

FERC Control Number: JD79–5719
API Well Number: 49–009–21229
Section of NGPA: 103
Operator: Champlain Petroleum Company
Well Name: No. 2 Federal 24–2
Field: Dry Ford Area
County: Converse
Purchaser: McCulloch Int. Gas Corp.
Volume: 116 MMcf.

FERC Control Number: JD79–5720
API Well Number: 49–009–21182
Section of NGPA: 103
Operator: Champlin Petroleum Company
Well Name: Federal No. 1 (22–21)
Field: Manning
County: Converse
Purchaser: McCulloch Int. Gas Corp.
Volume: 89 MMcf.

FERC Control Number: JD79–5721
API Well Number: 33–053–00719
Section of NGPA: 103
Operator: Gulf Oil Corportion
Well Name: USA 2–25–2B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 19 MMcf.

FERC Control Number: JD79–5722
API Well Number: 33–053–00719
Section of NGPA: 102
Operator: Gulf Oil Corportion
Well Name: USA 2–25–2B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 19 MMcf.

FERC Control Number: JD79–5723
API Well Number: 33–053–00689
Section of NGPA: 102
Operator: Gulf Oil Corportion
Well Name: P. Glovatsky Fed. 1–24–3B
Field: Little Knife
County: McKenzie
Purchaser: Montana Dakota Utilities
Volume: 53 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence conerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17213 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Kerr-McGee Corp.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 25, 1979.

On May 11, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Louisiana, Department of Natural Resources

FERC Control Number: JD79–4775
API Well Number: 1772520192
Section: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 1268 Well No. 9
Field: Main Pass Block 47 Field
County: Offshore Plaqumeines Parish
Purchaser: Southern Natural Gas Co.
Volume: Kerr-McGee Working Interest=183 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17218 Filed 6-1-79; 8:45 a.m.]

BILLING CODE 6450-01-M

[Docket No. RI79-32]

Logue & Patterson, Inc.; Petition for Special Relief

May 29, 1979.

Take notice that on March 15, 1979, Logue and Patterson Inc. (Logue and Patterson), 1300 One Energy Square, Dallas, Texas 75206 filed a petition for special relief in Docket No. RI79–32 pursuant to Section 2.56b(g) of the Commission's general policy and interpretations.

Logue and Patterson seek a rate of $.96809 for the sale of natural gas produced from the Walter Dube #1 Well, Aqua Dulce Field, Nueces County, Texas. The purchaser is United Gas Pipeline Company. According to the petition, the well has yet to reach payout after 15 years of production and total expenses have exceeded total income for the last 17 months of operation.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before June 20, 1979. 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.

Kennth F. Plumb,

Secretary.

[FR Doc. 79-17197 Filed 6-1-79; 8:45 p.m.]

BILLING CODE 6450-01-M

Mobil Oil Corp. and Mobil Oil Exploration and Producing; determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 24, 1979.

On May 11, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Department of the Interior, Geological Survey

FERC Control Number: JD79–4744
API Well Number: 177134003100D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 11, 17A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 2,300 MMcf.

FERC Control Number: JD79–4745
API Well Number: 177054019000D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: MM–2 Upper, Fault Block B–1
Field: NA
County: NA
Purchaser: Trunkline Gas Company
Volume: 3204 MMcf.

FERC Control Number: JD79–4747
API Well Number: 1770540315D2
Section of NGPA: 102
Operator: Mobil Oil Exploration & Producing
Well Name: LNC–10, Fault Block K
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 183 MMcf.

FERC Control Number: JD79–4748
API Well Number: 177114036700D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 12B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 3,740 MMcf.

FERC Control Number: JD79–4749
API Well Number: 177114036900S1
Section of NGPA: 102
Operator: Mobil Oil Corporation

Well Name: Ship Shoal Block 72, 11–A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 3,612 MMcf.

FERC Control Number: JD79–4750
API Well Number: 177114038201D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 14B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 3,544 MMcf.

FERC Control Number: JD79–4751
API Well Number: 177114036800S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 13–A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 1582 MMcf.

FERC Control Number: JD79–4752
API Well Number: 1770540315D1
Section of NGPA: 102
Operator: Mobil Oil Exploration & Producing
Well Name: Vermilion Block 215, B–7A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 101 MMcf.

FERC Control Number: JD79–4754
API Well Number: 177134003300D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 10, 9B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 268 MMcf.

FERC Control Number: JD79–4755
API Well Number: 177114035200S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 8A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 3578 MMcf.

FERC Control Number: JD79–4756
API Well Number: 177134002200D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 10, 7C
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 78 MMcf.

FERC Control Number: JD79–4757
API Well Number: 177054026500D3
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Vermilion Block 131, 13B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 1,278 MMcf.

FERC Control Number: JD79–4758
API Well Number: 17713400300D2
Section of NGPA: 102
Operation: Mobil Oil Corporation
Well Name: South Pelto Block 11, 17B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 2,884 MMcf.

FERC Control Number: JD79–4759
API Well Number: 177114038201D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 14A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 4,734 MMcf.

FERC Control Number: JD79–4760
API Well Number: 177134001300D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 9, 1A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 78 MMcf.

FERC Control Number: JD79–4761
API Well Number: 177114036200D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 10C
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 3,980 MMcf.

FERC Control Number: JD79–4762
API Well Number: 177114036200D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 10A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 3,400 MMcf.

FERC Control Number: JD79–4763
API Well Number: 177114034900S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 7A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 214 MMcf.

FERC Control Number: JD79–4764
API Well Number: 177114034400D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 6A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 4,776 MMcf.

FERC Control Number: JD79–4765
API Well Number: 177134001400D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 10, 3B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 1,100 MMcf.

FERC Control Number: JD79–4766
API Well Number: 177134002200D1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 10, 7A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 1,780 MMcf.

FERC Control Number: JD79–4767
API Well Number: 177114034400D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: Ship Shoal Block 72, 6B
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 4,512 MMcf.

FERC Control Number: JD79–4768
API Well Number: 177134001600S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: South Pelto Block 10, 4A
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 328 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17214 Filed 6–1–79; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. CP78-290]

Mountain Fuel Supply Co.; Petition To Amend

may 29, 1979.

Take notice that on April 11, 1979,[1] Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP78-290, a petition to amend the order of September 25, 1978, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to permit Applicant to sell natural gas to Mountain Fuel Resources, Inc. (Resources) from an enlarged area pursuant to an amendment to an agreement between the parties dated February 14, 1977, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Applicant states that it was granted authorization in Docket No. CP78-290 to sell natural gas from the Lower Draw area of western Colorado to Resources pursuant to the aforementioned agreement between the parties. Applicant states that it has drilled additional wells and expanded the supply of natural gas in the Lower Horse Draw area of Rio Blanco County, Colorado. It is stated that this area is remote from its own gathering and transmission facilities but is in proximity to the pipeline facilities of Resources. Therefore, it is stated, Applicant and Resources have amended their agreement to provide that Applicant would sell to Resources all gas developed by Applicant in the expanded area.

Applicant estimates that the additional gas supply would be approximately 1,000 Mcf per day, bringing the total natural gas sales from the Lower Horse Draw area to approximately 2,000 Mcf per day. Applicant states that the price for each well would be the highest rate allowed under the Natural Gas Policy Act of 1978, and the applicable Commission rules thereunder.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.18 or 1.10). All protests filed wih the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17198 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[1] The application was initially tendered for filing on April 11, 1979; however, the fee required by Section 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until May 23, 1979; thus, filing was not completed until the latter date.

[Docket No. EL78-29]

New York State Electric & Gas Corp.; Order Granting Rehearing for Further Consideration

Issued May 25, 1979.

An application for rehearing of the Declaratory Order issued March 28, 1979,[1] has been filed by New York State Electric and Gas Corporation.

The Commission finds: In order to afford additional time for consideration of the issues raised in the application for rehearing, it is appropriate and proper in the administration of the Federal Power Act and in the public interest to grant rehearing of this order for the limited purpose of reconsideration.

The Commission orders: (A) Reharing of the Declaratory Order issued March 28, 1979, is hereby granted for the limited purpose of further consideration.

(B) As provided in Section 1.34(d) of the Commission's Rules of Practice and Procedure, no answers to the applications for rehearing will be entertained by the Commission, since this order does not grant rehearing upon any substantive issues.

(C) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-17199 Filed 6-1-79; 8:45]

BILLING CODE 6450-01-M

[1] New York State Electric & Gas Corporation, EL78-29, "Declaratory Order Modifying Jurisdictional Contracts," issued March 28, 1979.

[Docket No. SA79-3]

Oklahoma Natural Gas Co., et al.; Petition for Adjustment

May 23, 1979.

On April 23, 1979, Oklahoma Natural Gas Company, Oklahoma Natural Gas Storage Company, ONG Western Inc. and ONG Exploration, Inc. (Applicants), 624 South Boston Avenue, Tulsa, Oklahoma 74119, filed in Docket No. SA79-3 for an adjustment under 18 C.F.R. Part 276 requesting that the Applicants be allowed to report its intrastate purchases in the manner set forth on the Exhibit attached to the Petition rather than as set forth in Forms 123 and 125 found in 18 C.F.R. § 276.101 adopted on March 23, 1979, in Docket No. RM79-30. This is more fully set forth in the application which is on file with the Commission and open to public inspection. If granted this adjustment would allow the Applicants to report on a purchase point basis rather than on a contract basis.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before June 19, 1979.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-17200 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-309]

Panhandle Eastern Pipe Line Co.; Petition To Amend

May 24, 1979.

Take notice that on May 9, 1979, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP70-309 a petition to amend the order of November 9, 1970, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to permit Applicant to increase the maximum reservoir gas content for the Tuscola Storage Project from 7,500,000 Mcf to 9,000,000 Mcf, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

Applicant states that the FPC in its order isued in Docket CP70-309, established 7,500,000 Mcf as the maximum inventory of natural gas to be stored in the Mt. Simon Formation of the Tuscola Field located in Douglas and Champaign Counties, Illinois. It is stated that the order issued in said docket authorized Applicant to construct testing and development programs to determine if the Tuscola Field is a viable

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

underground storage project. Applicant also states that it has conducted extensive testing with respect to the Mt. Simon Formation and concludes that this formation has capacity for a maximum inventory of natural gas for storage purposes of 15,000,000 Mcf. It is stated that Applicant's injection-withdrawal schedule regarding the Tuscola Field for the period 1979 through 1983 indicates that the authorized reservoir capacity of 7,500,000 Mcf would be exceeded during the month of July 1979. Applicant asserts that the requested increase in authorized natural gas capacity is necessary in order to protect the integrity of the pressure base of the Mt. Simon Formation during the storage injection season of 1979. Applicant further asserts that the existing authorized maximum capacity of the Tuscola Storage Field must be increased by July 1979 in order for Applicant to continue storage injections through 1979.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intrervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17201 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-137]

Panhandle Eastern Pipe Line Co.; Petition To Amend

May 24, 1979.

Take notice that on May 10, 1979, Panhandle Eastern Pipe Line Co. (Panhandle), P.O. Box 1642, Houston, Tex. 77001, and P.O. Box 1348, Kansas City, Missouri 64141, filed in Docket No. CP78-137 a petition to amend the order issued May 12, 1978 in the instant docket pursuant to Section 7(c) of the Natural Gas Act for authorization to relocate only one of the 1,000 horsepower compressor units at the Ft. Lupton Compressor Station, Weld County, Colorado, to the Brighton Compressor Station, Adams County, Colorado, in lieu of the two compressor units previously authorized for relocation, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

Panhandle states that it has determined that the relocation of only one 1,000 horsepower compressor unit is required at this time to accommodate the volumes available to this area of the Colorado gathering system. The remaining 1,000 horsepower compressor unit would continue to be utilized at the Ft. Lupton Compressor Station, it is further stated.

Panhandle asserts that the cost associated with the rlocation of one 1,000 horsepower compressor unit from Ft. Lupton Compressor Station would be $98,000. Panhandle would be relieved of expending a sum of approximately $98,000 in not relocating the additional compressor unit, it is said.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17202 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RI79-33]

Petroleum Associates Fund Inc., Operator; Petition For Special Relief

May 29, 1979.

Take notice that on March 21, 1979, Petroleum Associates Fund, Inc., Operator, (Petroleum Associates) 400 N. Woodlawn, Wichita, Kansas 67208 filed a petition for special relief in Docket No. RI79-33 pursuant to Section 2.76 of the Commission's General Policy and Interpretations.

Petroleum Associates seeks a rate increase from $.2029 to $1.00 per Mcf for the sale of natural gas produced from the Bergner No. 1 Well, Borchers Northwest Field, Meade County, Kansas. The purchaser is Panhandle Eastern Pipe Line Company. Petroleum Associates states that it has installed a pumping unit and related equipment to handle the oil produced by the well which interfered with gas production. Estimated reserves are 267,000 Mcf. The petition also states that while the property now operates at the break-even point, operating costs are expected to increase in the future.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 C.F.R. 1.8 or 1.10). All such petitions or protests should be filed on or before June 20, 1979. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17203 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Petroleum Enterprisers and Ramoil; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 25, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Kansas, State Corporation Commission, Conservation Division

FERC Control Number: JD79-4769
API Well Number: 1501921083
Section of NGPA: 102
Operator: Petroleum Enterprisers
Well Name: Flora Julian 1
Field: Oliver
County: Chautauqua
Purchaser: Gas Associated Systems, Inc.

Volume: 27,000 MMcf.

FERC Control Number: JD79–4770
API Well Number: 1503520942
Section of NGPA: 102
Operator: Ramoil
Well Name: Richardson #1
Field: NA
County: Cowley
Purchaser: Colonial Corporation
Volume: 28,543 MMcf.

FERC Control Number: JD79–4771
API Well Number: NA
Section of NGPA: 102
Operator: Petroleum enterprises
Well Name: Oliver "B" #1
Field: Oliver
County: Chautauqua
Purchaser: Gas Associated Systems, Inc.
Volume: 3,650,000 MMcf.

FERC Control Number: JD79–4772
API Well Number: 1501921,088
Section of NGPA: 102
Operator: Ramoil
Well Name: Glasscock #1
Field: Oliver
County: Chautauqua
Purchaser: Gas Associated Systems, Inc.
Volume: 91,250 MMcf.

FERC Control Number: JD79–4773
API Well Number: 15–019–21,015
Section of NGPA: 102
Operator: Ramoil
Well Name: Jeanneret #1
Field: Oliver
County: Chautauqua
Purchaser: Gas Associated Systems, Inc.
Volume: NA

FERC Control Number: JD79–4774
API Well Number: 15–019–20967
Section of NGPA: 102
Operator: Ramoil
Well Name: Rogers #1
Field: Oliver
County: Chautauqua
Purchaser: Gas Associated Systems, Inc.
Volume: 365,000 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 19, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17217 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

POI Energy, Inc., et. al.; Errata Notice, Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 23, 1979.

Please change the FERC Control Numbers of the items listed below (published April 19, 1979, 44 FR 23290, Col. 1 and 2, Dated April 11, 1979). The other information remains the same and is repeated here for ease of reference.

FERC Control Number: Change JD79–2261 to JD79–2473
API Well Number: 34 133 2 1517 14
Section of NGPA: 103
Operator: POI Energy, Inc.
Well Name: Hillbrunner No. 1
Field:
County: Portage
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: Change JD79–2262 to JD79–2474
API Well Number: 34 119 2 4407 14
Section of NGPA: 103
Operator: Berea Oil and Gas Corp.
Well Name: O. & R. Ault No. 1
Field:
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 54 MMcf.

FERC Control Number: Change JD79–2263 to JE79–2475
API Well Number: 34 119 2 4404 14
Section of NGPA: 103
Operator: Berea Oil and Gas Corp.
Well Name: H. & K. Brill No. 1
Field:
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 36 MMcf.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17212 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CI67-808, et al.]

Shell Oil Company (Operator) et al., Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

May 25, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with referrence to said application should on or before June 1, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
C6I7-808, [1] July 18, 1978	Shell Oil Company (Operator) *et al.* Two Shell Plaza, P.O. Box 2099, Houston, Texas 77001.	Southern Natural Gas Company, Block 39, Vermilion Area, Offshore Louisiana.	[3]	15.025
CI73-148, C, October 20, 1977	Continental Oil Company, P.O. Box 2197, Houston Texas 77001.	Tennessee Gas Pipeline Company, Block 77, East Cameron Area, Offshore Louisiana.	[3]	15.025
CI76-778, [1] July 18, 1978	Shell Oil Company (Operator) *et al*	Transcontinental Gas Pipe Line Corporation, Block 39, Vermilion Area, Offshore Louisiana.	[2]	15.025
CI76-780, [1] July 18, 1978	Shell Oil Company (Operator) *et al*	Florida Gas Transmission Company, Block 39, Vermilion Area, Offshore Louisiana.	[3]	15.025

[1] Application to include interest of King Ranch, Inc., in dedicated acreage.
[2] By Letter Agreement dated 5-12-78, King Ranch Inc., acquired a 3.3690% working interest in the Vermilion Block 39 acreage and thereby reducing Shell's working interest in this acreage to 71.6310%. Shell will make all filings with the Commission for King Ranch, Inc., as operator of the acreage herein described.
[3] Applicant is filing under Contract dated 7-25-72, amended by Amendatory Agreement dated 8-23-77.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 79-17204 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-659, CI77-854]

Southern Natural Gas, Co. and SONAT Exploration Co.; Filing of Settlement Proposal

May 23, 1979

Take notice that on May 16, 1979, Southern Natural Gas Company (Southern) and SONAT Exploration Company (SONAT) filed in the above-captioned proceedings a proposed revised Stipulation and Agreement in substitution for a Stipulation and Agreement submitted on May 3, 1979. Southern had previously filed on May 3, 1979, a motion for approval of the Stipulation and Agreement proffered on that date requesting the issuance of certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act authorizing (1) the transfer of Southern's production properties [1] to SONAT, an affiliate; and (2) the continuance by SONAT, as successor-in-interest to Southern, of certain off-system sales currently made by Southern as well as the initiation by SONAT of sales by gas from the aforesaid transferred properties to Southern. Movants urge that the transfer of the aforementioned properties to SONAT, which since 1970 has conducted substantially all exploration and related production efforts for the consolidated companies in the Southern Natural Resources, Inc. system, will consolidate exploration and production activities, thereby resulting in a benefit to Southern's gas supply.

The Stipulation and Agreement states that the transfer of the properties to SONAT from Southern will substantially aid SONAT in financing its future exploration and production program, and that the transfer of the Southern properties in and of itself will not change in any way the price level of future gas deliveries from such properties to Southern. The prposed stipulation is further stated to constitute a negotiated settlement, which with the exception of Southern's agreement on cost-of-service gas, is without prejudice to any claim or contention that any party may make in any future proceedings.

Comments on the proposed Stipulation and Agreement may be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, on or before June 7, 1979. Such comments will be considered by the Commission in determining appropriate action, but will not serve to make commenters parties to the proceeding.

The record in this proceeding, including the Stipulation and Agreement and the motion for approval thereof, is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-17205 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Except certain properties specified on page 2 of the proposed Stipulation and Agreement for the reasons there stated.

[Docket Nos. G-9279, et al.]

Southern Natural Gas Co.; Filing of Pipeline Refund Reports and Refund Plans

May 23, 1979.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 7, 1979. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
2/16/79	Southern Natural	G-9279	Report
4/9/79	Columbia Gas	G-20270	Plan
4/16/79	Southern Natural	G-9279	Report
4/27/79	Lawrenceburg	RP70-6	Report

[FR Doc. 79-17206 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-18 (CP67-337)]

South Texas Natural Gas Gathering Co. and Trunkline Gas Co.; Stipulation and Agreement

May 29, 1979.

Take Notice that on May 25, 1979, Trunkline Gas Company (Trunkline) and South Texas Natural Gas Gathering Company (South Texas) filed a Stipulation and Agreement with the Commission in order to properly dispose of all matters relating to an exchange imbalance that remained after the term of an exchange agreement between these pipelines which was certificated by Commission order issued on September 22, 1967, in Docket No. CP67-337 had expired.

At the expiration of the term of this exchange agreement, Trunkline had delivered approximately 1,281,000 Mcf over the corresponding volumes that it had received from South Texas under the arrangement certificated by the Commission in Docket No. CP67-337.

The noted exchange imbalance is presently an issue before the Commission in Docket No. CP77-18 where South Texas seeks authorization,

pursuant to Section 7(b) of the Natural Gas Act, to abandon the exchange arrangement it was authorized to undertake with Trunkline in Docket No. CP67–337. Trunkline intervened in Docket No. CP77–18 to make certain that prior to granting the abandonment requested in Docket No. CP77–18 by South Texas that the issues relating to exchange imbalance outstanding at the time of the termination of the agreement would be resolved.

In order to resolve all issues with respect to the exchange imbalance, including all claims for unpaid monetary interest and any other costs incurred by Trunkline in maintaining the exchange imbalance, South Texas, upon the execution of this Stipulation and Agreement, paid over to Trunkline $1,300,000. In consideration of this payment and upon approval of this Stipulation and Agreement, Trunkline agrees to release South Texas from all claims, obligations and liability, contractual or otherwise, arising by virtue of the exchange imbalance. If the Commission issues a final order relative to this Stipulation and Agreement, which is not acceptable to the parties, Trunkline shall, within 10 days, repay the $1,300,000 to South Texas plus interest and the Stipulation and Agreement shall be deemed terminated.

As part of the Stipulation and Agreement, Trunkline requests that the Commission permit the withdrawal of its intervention in Docket No. CP77–18 and that it be permitted to join with South Texas in its application for abandonment of service in that docket. South Texas also requests that the Commission permit the withdrawal of its Petition for Determination of a Just and Reasonable Rate pursuant to Section 5 of the Natural Gas Act in Docket No. CP77–18.

Any person desiring to be heard or to make any comment or protest with reference to Trunkline's and South Texas' Stipulation and Agreement, as described above, should on or before June 14, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene, protests or comments 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 protestant parties to the proceeding. Persons wishing to become parties to this proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The Stipulation and Agreement is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17207 Filed 6–1–79; 8:45 am]

BILING CODE 6450–01–M

[Docket Nos. CP79–214 and CP79–275 et al.]

Transcontinental Gas Pipe Line Corp. et al.; Order Consolidating Proceedings, Establishing Procedures, Granting Petitions To Intervene, and Initiating Expedited Hearing

Issued May 18, 1979.

On March 12, 1979, and April 18, 1979, Transcontinental Gas Pipe Line Corporation (Transco) in Docket Nos. CP79–214 and CP79–275, respectively, on March 14, 1979, National Fuel Gas Supply Corporation (National Supply) in Docket No. CP79–221, on April 10, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), in Docket No. CP79–260, and on April 19, 1979, Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. CP79–278 filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the transportation of up to 75,000 dekatherms (dt) equivalent of natural gas to be purchased by Consolidated Edison Company of New York, Inc. (Con Ed) from National Fuel Gas Distribution Corporation (National Distribution), all as more fully set forth in the applications.

The subject gas is to be used to displace imported fuel oil for direct electric or steam generation by Con Ed in accordance with the Secretary of Energy's request that certain natural gas be used temporarily to reduce oil imports. The estimated purchases for the first year are approximately 22,750,000 dt.[1]

In Docket No. CP79–221, National Supply requests certificate authorization to transport on an interruptible basis up to 75,000 dt equivalent of gas per day by displacement for National Distribution and to make such gas available to Transco, Tennessee and Texas Eastern for subsequent transportation and delivery to Con Ed at existing delivery points in the New York City metropolitan area. In Docket No. CP79–214, Transco requests certificate authorization to transport on an interruptible basis up to 40,000 dt equivalent per day by displacement for Con Ed from the interconnection between Transco and National Supply in Potter County, Pennsylvania, to Con Ed at Transco's existing delivery points to Con Ed in the New York City metropolitan area. In Docket No. CP79–260, Tennessee requests certificate authorization to transport on a best efforts basis for an initial term of one year up to 75,000 Mcf of gas per day for Con Ed from National Supply at Tennessee's Ellisburg, New York, delivery point or other mutually agreed upon interconnections to either or both of the following delivery points: (1) an existing interconnection of the facilities of Tennessee and Transco at Tennessee's Rivervale sales meter station in Bergen County, New Jersey, or other existing interconnections between Tennessee and Transco, and (2) Tennessee's existing White Plains delivery point to Con Ed located in Westchester County, New York. In Docket No. CP79–275, Transco requests certificate authorization to transport on an interruptible basis for two years up to 75,000 dt equivalent of gas per day for Con Ed from Tennessee at the Tennessee-Transco Rivervale interconnection in Bergen County, New Jersey, to Transco's existing delivery points to Con Ed in the New York City metropolitan area. In Docket No. CP79–278, Texas Eastern requests certificate authorization to transport on an interruptible basis for two years up to 65,000 dt equivalent of gas per day for Con Ed from National Supply at the Texas Eastern-National Supply interconnection located in Greene County, Pennsylvania, to either or both of the following delivery points: (1) an existing interconnection with The Brooklyn Union Gas Company in Richmond County, New York, and (2) an existing interconnection with Transco at Lambertville, New Jersey, or at other mutually agreeable points of delivery in Texas Eastern's Zone D.

The following petitions to intervene and notices of intervention have been filed in the subject dockets:

Docket No. CP79–214

Philadelphia Gas Works
Public Service Electric and Gas Company
Philadelphia Electric Company
The Brooklyn Union Gas Company
Long Island Light Company
The Public Service Commission of the State of New York
Consolidated Edison Company of New York, Inc.
General Motors Corporation

[1] Temporary certificates have been granted to Applicants (Commissioner Smith dissenting as to those issued in Docket Nos. CP79–260, CP79–275, and CP79–278) authorizing the proposed services for no more than one year.

Docket No. CP79–221

Philadelphia Gas Works
Public Service Electric and Gas Company, Tennessee
The State of Louisiana
General Motors Corporation

Docket No. CP79–260

The Public Service Commission of the State of New York
General Motors Corporation
Consolidated Edison Company of New York, Inc.

Docket No. CP79–275

General Motors Corporation
Consolidated Edison Company of New York, Inc.

Docket No. CP79–278

The Public Service Commission of the State of New York
Philadelphia Electric Company (Philadelphia Electric) in Docket No. CP79–214 and General Motors Corporation (General Motors) in Docket Nos. CP79–260 and CP79–275 as well as Docket Nos. CP79–214 and CP79–221 request formal hearings.

It is the Commission's view that the subject applications raise a number of issues and that a consolidated formal hearing in these matters should be held to determine whether the granting of the applications would be in the public interest. It appears that the subject applications raise the following issues and questions with respect to the proposed arrangements:

1. What is the source of the gas to be sold by National Distribution to Con Ed and whether the natural gas being sold for boiler fuel use is actually surplus gas since Philadelphia Electric, Con Ed and National Supply are each customers of Transco and Texas Eastern, both of which are either curtailing or may be projecting future curtailment? Further, what would be the disposition of the subject gas if the sale by National Distribution to Con Ed were not made? In this regard, what has been the disposition, if any, of this source of excess gas in the past?

2. If the subject arrangement were not authorized, would National Distribution have excess supplies and therefore be required to back-off takes from its interstate suppliers (through National Supply), thus providing additional gas to the interstate market; or, posed in another way, what is the "actual impact" of the subject arrangement upon the curtailment levels of the interstate suppliers of National Distribution and Con Ed?

3. Whether the proposed arrangement will achieve the stated objective of reducing oil consumption and conserving fuel oil:

(a) What restrictions, if any, are placed upon the fuel oil to be displaced by the gas to be sold by National Distribution?

(b) Do National Distribution's synthetic natural gas (SNG) sources use more fuel oil in the manufacture of SNG than Con Ed will displace?

(c) Would reduced curtailment on National Supply's interstate suppliers conserve fuel oil?

4. What will be the impact of the subject arrangement on National Distribution's other customers? Whether National Distribution's ability to meet its customers' requirements in the future will be impaired if the gas to be sold to Con Ed comes in part from sources other than SNG?

5. Whether the price to be charged by National Distribution to Con Ed is reasonable and whether National Distribution's other customers will be required to bear any of the costs associated with the proposed off-system sale.

Accordingly, the applications in the subject dockets shall be consolidated and an expedited formal hearing shall be held on the issues and questions set forth above. Upon the conclusion of the hearing so ordered, the Administrative Law Judge's intermediate decision shall be omitted and the record in the proceedings shall be certified directly to the Commission for decision.

Con Ed filed out of time a petition to intervene in Docket No. CP79–214. However, Con Ed has filed timely petitions to intervene in Docket Nos. CP79–260 and CP79–275. As a result, the Commission will permit it to participate as a party in the consolidated proceeding. Similarly, General Motors filed out of time a petition to intervene and request for formal hearing in Docket Nos. CP79–214 and CP79–221. Because General Motors timely filed to intervene in Docket Nos. CP79–260 and CP79–275 the Commission will permit it to participate as a party in the consolidated proceeding.

The Commission finds

(1) Due to common issues of fact and law, it is in the public interest to conoldiate for all purposes the applications in Docket Nos. CP79–214, CP79–221, CP79–260, CP79–275, and CP79–278, and further, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that said applications be set for formal hearing in accordance with the procedures herein set forth.

(2) Participation by the petitioners to intervene in the subject dockets may be in the public interest.

(3) Good cause exists to permit the late interventions by Con Ed and General Motors.

The Commission orders

(A) The applications in Docket Nos. CP79–214, CP79–221, CP79–260, CP79–275, and CP79–278 are consolidated.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 7 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act, a public hearing shall be held on the subject consolidated applications, in the manner provided for in the instant order.

(C) A Presiding Administrative Law Judge designated by the Chief Administrative Law Judge shall preside over the hearing provided for in this order and shall consistent therewith assure its timely commencement in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further rules and any other procedural dates as provided for in this order and in the Commission's Rules of Practice and Procedure.

(D) The Administrative Law Judge's intermediate decision in these proceedings is omitted and upon the conclusion of the hearing ordered, the record in these consolidated proceedings shall be certified directly to the Commission for decision.

(E) Petitioners to intervene are permitted to intervene in these proceedings subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and, *Provided, further,* that the admission of said interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–17209; Filed 6–1–79; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. RA79–26]

Stephens and Cass; Filing of Petition for Review Under 42 U.S.C. 7194

May 25, 1979.

Take notice that Stephens and Cass on April 20, 1979 filed a Petition for

Review under 42 U.S.C. § 719(b) (1977 Supp.) from an order of the Secretary of Energy.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before June 12, 1979, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through Gaynell C. Methvin, Deputy General Counsel for Enforcement and Litigation, Department of Energy, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17208 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RI79-36]

Triton Oil & Gas Corp.; Petition for Declaratory Order

May 29, 1979.

Take notice that on April 5, 1979, Triton Oil and Gas Corporation (Triton), One Energy Square, 4925 Greenville Avenue, Dallas, Texas 75206 filed in Docket No. RI79-36 a petition for declaratory order pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure. Triton requests a determination that it has no refund obligation under Southern Louisiana Area Rate Opinion No. 598 for rates it collected for certain sales of gas. The gas is produced from four fields in the Southern Louisiana Area and sold to Tennessee Gas Pipeline Company, Texas Gas Transmission Company and Southern Natural Gas Company under Triton's Rate Schedules 1 and 8, 6, and 7 respectively.

On June 6, 1978, the Commission directed Triton, among other producers, to disburse refunds for the period from October 1968 to January 1971 pursuant to the Commission's Opinion Nos. 598 and 598-A or show cause why such refunds were not due. Triton's position is that because sales under these rate schedules were authorized by permanent certificates of public convenience and necessity which contained no refund conditions, there is no refund obligation. Triton acknowledges that the Commission may order refunds and reductions in rates after August 1, 1971—the effective date of Opinion No. 598. However, it asserts that the Commission is without authority to order such adjustments prior to the effective date where rates were not collected subject to a suspension order or under a temporary certificate.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with requirements of the Commission's rules of practice and procedure (18 C.F.R. 1.8 or 1.10). All such petitions or protests should be filed on or before June 20, 1979. 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 procceding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17210 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP78-68]

United Gas Pipe Line Co.; Informal Settlement Conference

May 23, 1979.

Take notice that on June 7, 1979, at 1:30 p.m. an informal conference of all interested persons will be convened for the purpose of continued settlement discussions in this proceeding. The conference will be held in Room 3200 of the Federal Energy Regulatory Commission at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in this proceeding and to make commitments with respect to such issues and any offers of settlement or stipulation discussed at the conference.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-17211 Filed 6-1-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Conservation and Solar Applications

Meeting Regarding Emergency Building Temperature Restrictions Program

Notice is hereby given that the Department of Energy (DOE) will hold a meeting with the National Governors' Association on Friday, June 8, 1979, at 11 a.m. in Room 265, 444 North Capitol Street, Washington, D.C.

The purpose of the meeting will be to discuss the role of the States in implementing the Emergency Building Temperature Restrictions Program. This program is authorized by the President's "Standby Conservation Plan No. 2: Emergency Building Temperature Restrictions," which recently was approved by the Congress.

Issued in Washington, D.C. on May 31, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-17456 Filed 6-1-79; 12:05 pm]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1238-6]

Air Quality; Clarification of Agency Policy Concerning Ozone SIP Revisions and Solvent Reactivities

ACTION: This notice is published under the authority of section 101(b) and section 103 of the Clean Air Act. The notice clarifies EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314 (July 8, 1977).

STATEMENT: The July 1977 Policy Statement noted that only reactive volatile organic compounds participate in the chemical reactions that form photochemical oxidants. Currently available information suggests that negligibly photochemically reactive volatile organic compounds as defined in that Statement, including methyl

chloroform and methylene chloride, do not appreciably affect ambient ozone levels. Hence, EPA will not disapprove any state implementation plan or plan revision for its failure to contain regulations restricting emissions of these compounds.

Although these substances need not be controlled under state implementation plans for the purpose of achieving ambient ozone standards, nothing in this memorandum is intended to modify past EPA expressions of concern about the uncontrolled use of methyl chloroform and methylene chloride. As noted in the above referenced policy and the clarification presented in memoranda of August 24, 1978 and March 6, 1979, there is suggestive evidence that both compounds are potentially carcinogenic and methyl chloroform is suspected of contributing to depletion of stratospheric ozone. See, for example, the following studies:

Simmon, V. F., Kauhanen, K. and Tardiff, R. G., "Mutagenic Activity of Chemicals Identified in Drinking Water" in *Progress in Genetic Toxicology*, ed. I. D. Scott, B. A. Bridges, and F. H. Sobels, at 249–258 (Elsevier, 1977);

Price, P. G., Hassett, C. M. and Mansfield, O. I., "Transforming Activities of Trichloroethylene and Proposed Industrial Alternatives" *In Vitro* 14:3, at 290–293 (1978);

Theiss, J. C., Stoner, G. D., Shimkin, M. B., *et al.*, "Test for Carcinogenicity of Organic Contaminants of United States Drinking Waters by Pulmonary Tumor Response In Strain A Mice," *Cancer Research*, 37(8 Pt. 1): 2717–20, (August 1977);

The EPA Carcinogen Assessment Group's Preliminary Risk Assessment on Methyl Chloroform, Type I—Air Program, (January 17, 1979);

The EPA Carcinogen Assessment Group's Preliminary Risk Assessment on Methylene Chloride, Type I—Air Program, (January 17, 1979);

Conference on Methyl Chloroform and other Halocarbon Pollutants, sponsored by Environmental Sciences Research Laboratory, U.S. EPA, February 27–28, 1979, Washington, D.C. (proceedings in press).

Because both methyl chloroform and methylene chloride are potentially harmful, EPA recommends that these chemicals not be substituted for other solvents in efforts to reduce ozone concentrations. EPA further recommends that the states control these compounds under the authority reserved to them in section 116 of the Clean Air Act. Moreover, there is a strong possibility for future regulation of these compounds under the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: Joseph Padgett, Director, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, MD–12 Research Triangle Park, North Carolina 27711 (919) 541–5204.

Dated: May 25, 1979.

David G. Hawkins,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 79–17264 Filed 6–1–79; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1239–3]

Region II; Groundwater System of the New Jersey Coastal Plains Aquifer

On March 21, 1979, a notice was published stating that a petition has been submitted by the Environmental Defense Fund, Inc. and the Sierra Club-New Jersey Chapter, pursuant to Section 1424(e) of the Safe Drinking Water Act, Pub. L. 93–523, requesting the Administrator of the Environmental Protection Agency to make a determination that the aquifer underlying the Counties of Monmouth, Burlington, Ocean, Camden, Gloucester, Atlantic, Salem, Cumberland and Cape May and portions of Mercer and Middlesex Counties, New Jersey is the sole or principal drinking water source for the coastal plain area which, if contaminated, would create a significant hazard to public health.

The notice indicated that comments, data and references in response to the petition should be submitted by May 21, 1979. Due to the complexity of issues which surround the designation of the Coastal Plain Area as a sole source aquifer, EPA was requested to extend the comment period. In order to permit sufficient time for all interested individuals to provide their input, EPA will extend the comment period on this petition request from May 21, 1979 to August 20, 1979. Comments, data and references in response to the Coastal Plain Petition should be submitted in writing to Eckardt C. Beck, Regional Administrator, Region II, Environmental Protection Agency, 26 Federal Plaza, Room 1009, New York, N.Y. 10007, Attention: Coastal Plain Aquifer. Information concerning the Coastal Plain Aquifer System will be available for inspection at the above address.

Dated: May 21, 1979.

Eckardt C. Beck,

Regional Administrator.

[FR Doc. 79–17266 Filed 6–1–79; 8:45 am]

BILLING DATE 6560–01–M

[FRL 1239–3 OPP–00095]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Enforcement; Open Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of Open Meeting.

SUMMARY: There will be a two-day meeting of the Working Committee on Enforcement of the State-FIFRA Issues Research and Evaluation Group (SFIREG) on Tuesday and Wednesday, June 5–6, 1979, beginning at 8:30 a.m. each day, and concluding by 12 noon on June 6th. The meeting will be held at the Atlanta Town House, 100 Tenth Street, N.W., Atlanta, Georgia, Telephone: 404/892–6800, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. William Buffaloe, North Carolina Department of Agriculture, Raleigh, North Carolina, Telephone: 919/733–3556; or Mr. Anthony Dellavecchia, Pesticide and Toxic Substances Enforcement Division, EPA, 401 M Street, S.W., Washington, D.C., telephone: 202/755–0914.

SUPPLEMENTARY INFORMATION: This the second meeting of the Working Committee on Enforcement. The meeting will be concerned with the following topics:

1. Plan for future recall and suspension orders;

2. Clarification of undefined terms in Section 26 and 27 of FIFRA;

3. Status of State primacy use enforcement notice;

4. Use of recommendations of agricultural extension publications by pesticide sales representatives;

5. Discussion of definition of "non crop land;"

6. FIFRA Section 7—producers of active ingredients; and

7. Other enforcement matters which may arise.

Dated: May 25, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Program.

[FR Doc. 79–17285 Filed 6–1–79; 8:45 am]

BILLING CODE 6560–01–M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Notice of Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on May 29, and May 30, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before June 22, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

Nuclear Regulatory Commission

The NRC requests clearance of a new, single-time questionnaire to be sent to certain licensees who operate Boiling Water Reactors (BWR's) regarding the relief and safety-relief valves that are installed in the reactor coolant system and/or the automatic depressurization system. Due to the characteristics of Boiling Water Reactors and the potential long-term effects due to safety-relief valve malfunctions, the NRC staff believes that licensees should make all reasonable efforts to increase reliability of these valves. General Electric has made recommendations to licensees which NRC believes would substantially reduce the likelihood of future failures. These recommendations consist of a short-term program of maintenance and minor modifications to the valve assembly and a long-term program involving the replacement of pilot operated actuators. The NRC plans to continue to monitor the performance of safety/relief valves, and the status and effectiveness of actions to improve their reliability over the long term. The questionnarie is designed to provide NRC with a status report on the current situation at the affected plants regarding this issue and also to obtain from licensees their plans for future actions in response to the recommendations made by General Electric. NRC's evaluation of the information submitted by licensees and analysis of reliability data will form the basis for any future action. The NRC estimates that respondents will number approximately 16 and that the reporting burden per plant will average 8 hours.

The NRC requests clearance of a revision to 10 CFR Part 20, Standards for Protection Against Radiation. The revision is a new recordkeeping requirement in section 20.102(a). The NRC's Office of Inspection and Enforcement has noted instances at a number of nuclear power plants in which transient workers have worked in the facilities of more than one licensee in a single calendar quarter. Reports of personnel monitoring on termination of employment or work assignment filed pursuant to section 20.408 by four categories of licensees, indicate an increase in the frequency of use of transient workers. The actual number with multiple terminations in a calendar quarter is small. However, the potential for overexposure during multiple employment is significant and increasing rapidly as more nuclear power plants are built and operated. Amended section 20.102(a) would require licensees to obtain certain information on prior occupational radiation dose if the worker is likely to exceed 25 percent (0.31 rem) of the basic 1.25 rems per quarter whole body dose limit in section 20.101(a) or 25 percent of the dose limit in section 20.104(a) if the individual is less than 18 years of age. The amendment will allow the NRC staff to determine, with increased assurance, that the total occupational dose of (cooperative) individuals, including transient workers and moonlighters, will be controlled. The proposed amendment would provide and inspectable record of the activities of licensees who use transient workers or moonlighters. The NRC estimates that 6,900 licensees will have to maintain records for 9,200 individuals and that the burden for maintaining a record for each worker will average approximately 11 minutes annually.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 79-17223 Filed 6-1-79; 8:45 am]

BILLING CODE 1610-09-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory bodies scheduled to assemble during the month of June 1979:

Community Alcoholism Services Review Committee

June 20–25—Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20014. Open—June 20; 7:00–9:00 p.m. Closed—Otherwise. Contact: Phillip Dawes, Room 11–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2080.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism relating to alcoholism services activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 7:00–9:00 p.m., June 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Biomedical Research Review Committee

June 25–29; 9:00 a.m. Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—June 25; 9:00 a.m.–12:00 noon. Closed—Otherwise. Contact: J. Michael Morrison, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 a.m.–12:00 noon, June 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5

U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee

June 25–29; 9:00 a.m. Conference Rooms G, I & L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—June 25; 9:00 a.m.–12:00 noon. Closed—Otherwise. Contact: Daniel L. Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2620.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 a.m.–12:00 noon, June 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Resource Development Review Committee

June 25–29; 9:00 a.m. Conference Room A, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open—June 25; 9:00 a.m.–12:00 noon. Closed—Otherwise. Contact: Thomas C. Voskuhl, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–6664.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Drug Abuse relating to demonstration treatment services, prevention and education, and training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00 a.m.–12:00 noon, June 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public, in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact persons listed above. The NIAAA Information Officer who will furnish upon request summaries of the meeting and rosters of the Committee members is Mr. Harry Bell, Associate Director, Office of Public Affairs, National Institute on Alcohol Abuse and Alcoholism, Room 11A–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–3306. The NIDA Information Officer who will furnish upon request summaries of the meeting and rosters of the Committee members is Ms. Mary Carol Kelly, Program Information Officer for Drug Abuse, National Institute on Drug Abuse, Room 10–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–6245.

Dated: May 29, 1979.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 79–17173 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–88–M

National Institutes of Health

Allergy and Clinical Immunology Research Committee; Amended Notice of Meeting

Notice is hereby given of changes in the meeting dates and times of the "closed" and "open" portions of the meeting of the Allergy and Clinical Immunology Research Committee, National Institute of Allergy and Infectious Diseases, which was published in the **Federal Register** on May 9, 1979, (44 FR 27266).

The Committee was to have met on June 11 and adjourned on June 12, but has been changed to meet on June 12 only.

This meeting will be open to the public on June 12 from 8:30 a.m. to 5:00 p.m. There will be no "closed" session.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–17178 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–08–M

General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, National Institutes of Health, June 28–29, 1979. The meeting will be held in Conference Rooms 9 and 10 on June 28, and in Conference Room 9 on June 29, Bldg. 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

The meeting will be open to the public on June 28 from 9:00 a.m. to 12:15 p.m., for the discussion of administrative matters relating to the Biomedical Research Support Program and the Minority Biomedical Support Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 28, 1979, from 1:30 p.m. to 5:00 p.m., and on June 29, 1979, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B13, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20205, 301–496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Sidney A. McNairy, Jr., Executive Secretary, General Research Support Review Committee, Room 5B33, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20205, 301–496–6743, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.337, National Institutes of Health)

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79–17181 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–08–M

Cancer Control Grant Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, June 10–12, 1979, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20205. The meeting will be open to the public on June 10, from 2:00 p.m. to 3:00 p.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 10, from

3:00 p.m. to adjournment, and on June 11–12, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Robert F. Browning, Executive Secretary, National Cancer Institute, Westwood Building, Room 806, National Institutues of Health, Bethesda, Maryland 20205 (301/496–7413) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.399, National Institutes of Health)

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–17177 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–08–M

General Medicine B Study Section and Microbial Chemistry Study Section; Amended Notice of Meetings

Notice is hereby given of a change in the meeting dates of the following National Institutes of Health Study Sections which were published in the **Federal Register** on May 10, 1979 (44 FR 27497):

The General Medicine B Study Section was to have met June 27–30, 1979, but will meet June 28–30, 1979, at 8:30 a.m. at the Linden Hill Hotel, Bethesda, MD, the same time and location for which it was originally scheduled.

The Microbial Chemistry Study Section was to have met June 6–8, 1979, but will meet June 7–8, 1979, at 8:30 a.m. at the Linden Hill Hotel, Bethesda, MD, the same time and location for which it was originally scheduled.

The meetings will be open to the public for approximately one hour at the beginning of the first session of the first day of the meeting.

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–17180 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–08–M

Transplantation Biology and Immunology Committee; Amended Meeting

Notice is hereby given of changes in the meeting dates and times of the "closed" and "open" portions of the meeting of the Transplantation Biology and Immunology Committee, National Institute of Allergy and Infectious Diseases, which was published in the **Federal Register** on May 9, 1979 (44 FR 27269).

The Committee was to have met on June 14 and adjourned on June 15, but has been changed to meet on June 15 only.

This meeting will be open to the public on June 15 from 8:30 a.m. to 3:00 p.m. and closed to the public from 3:00 p.m. until adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.855, National Institutes of Health.)

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–17179 Filed 6–1–79; 8:45 am]

BILLING CODE 4110–08–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N–79–932]

Consumer Forum on Urban Homesteading

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice is given announcing a consumer forum.

SUMMARY: The Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection is announcing a Consumer Forum on Urban Homesteading. The Forum is scheduled for July 12–13, 1979, and the description of the Forum is stated.

DATE OF FORUM: A Consumer Forum on Urban Homesteading is scheduled to be held on Thursday and Friday, July 12–13, 1979, from 9:00 a.m. to 5:00 p.m. at the Shoreham Americana Hotel, 2500 Calvert Street NW., Washington, D.C.

ADDRESS: Joseph Smith, Director, Consumer Liaison Division, Office of Consumer Affairs, Room 4212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Sherry Shields, 202–755–6996; Joseph Smith, 202–755–5360.

SUPPLEMENTARY INFORMATION: The two-day Urban Homesteading Forum will provide overview sessions and a series of workshops to enable participants to develop an in-depth understanding of HUD's Urban Homesteading Program and the various applications of the homesteading concept. The first day of the Forum will focus on single-family homesteading and initiatives such as "shopsteading." Multifamily homesteading and self-help rehabilitation will be highlighted on the second day. Workshop topics will include: Sources of Homesteading Properties, Rehabilitation Financing Available to Homesteaders, Involvement of Neighborhood Groups in Homesteading, and Multifamily Homesteading Experiments.

The Forum on Urban Homesteading will be open to the public.

Issued at Washington, D.C., May 2, 1979.

Geno C. Baroni,

Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 79–17221 Filed 6–1–79; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W–67845]

Wyoming; Application

May 21, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O. D. buried pipeline, a 4'×6' meter house and related metering and dehydration facilties for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 21 N., R. 94 W.,
Sec. 16, S½SE¼,
Sec. 22, SW¼NW¼, W½SW¼, SE¼SW¼.

The proposed pipeline will transport natural gas from the Federal #1–22 Well

located in the SW¼ of section 22, T. 21 N., R. 94 W., to a point of connection with an existing pipeline located in the SE¼ of section 16, T. 21 N., R. 94 W. all within Sweetwater County, Wyoming. The proposed metering and dehydration facilties will be contined within a 4'×6' metering house located within the proposed 50 foot right-of-way in the W½SW¼ of section 22, T. 21 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17167 Filed 6-1-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68167]

Wyoming; Application

May 21, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ inch O. D. buried pipeline, a 4'×6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 38 N., R. 89 W.,
Sec. 5, SE¼SE¼.

The proposed pipeline will transport natural gas produced from the Spear 1-5 Well located in the SE¼SE¼ of section 5, T. 38 N., R. 89 W., to a point of connection with an existing pipeline located in the SW¼NE¼ of section 8, T. 38 N., R. 89 W., all within Fremont County, Wyoming. The proposed 4'×6' meter house and related metering and dehydration facilities will be located within the proposed 50 foot right-of-way in the SE¼SE¼ of section 5, T. 38 N., R. 89 W., Fremont County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17168 Filed 6-1-79; 8:45 am]

BILLING CODE 4310-84-M

[W-67905]

Wyoming; Application

Note.—This document was incorrectly published in the **Federal Register** on Friday, June 1, 1979. The document was scheduled for publication today, Monday, June 4, 1979. The June 1 publication is hereby withdrawn and the document republished below.

May 22, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct an 8⅝ inch, three 6⅝ inch and two 4½ inch buried pipelines for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 19 N., R. 93 W.,
Sec. 14, W½W½,
Sec. 22, S½S½,
Sec. 24, S½S½,
Sec. 26, W½W½, SE¼SW¼, S½SE¼.

The proposed 4½ inch O.D. and 6⅝ inch O.D. lateral pipelines all located within T. 19 N., R. 93 W., will transport natural gas produced from several Champlin wells located within T. 19 N., Rs. 92 and 93 W., to points of connection with the proposed 8⅝ inch O.D. gathering line located within T. 19 N., R. 93 W., all within Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-17169 Filed 6-1-79; 8:45 am]

BILLING CODE 1505-01-M

Fish and Wildlife Service

[INT-DES-79-22]

Canaan Valley National Wildlife Refuge Tucker County, W. Va.; Availability of 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 final environmental statement on a proposed national wildlife refuge in Tucker County, West Virginia. The U.S. Fish and Wildlife Service proposes to acquire approximately 28,000 acres of unimproved wetlands and uplands in Canaan Valley, Tucker County, West Virginia. Acquisition would protect and preservce a unique boreal ecosystem. The wetland complex is the largest in West Virginia, representing about 39 percent of the State's wetland habitat. Refuge development would emphasize environmental education, interpretation, and a broad range of wildlife oriented recreation. Other land uses compatible with refuge objectives would be encouraged through use of easements, use reservations, and cooperative agreements. Comments were made by: USDA, DOC, DOE, DOI, DOT, EPA, State Agencies and groups.

Copies are available for inspection at the following locations:

Division of Refuge Management, Room 2355, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-4047.

Office of the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158, Telephone (617) 965-5100 Ext. 239.)

Single copies of the final environmental statement may be obtained on request to the Regional Director. Please refer to the statement number above.

Dated: May 30, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-17256 Filed 6-1-79; 8:45 am]

BILLING CODE 4310-10-M

Outer Continental Shelf, Southern Calif.; Oil and Gas Lease Sale No. 48

Correction

In FR Doc. 79–16518 appearing at page 30770 in the issue for Tuesday, May 29, 1979 make the following corrections:

(1) On page 30770, column three, line 14, "43 CFR 3302" should appear as "43 CFR 3302.4".

(2) On page 30770, column three, in paragraph *"4. Bonus bidding with a fixed sliding scale royalty."*, ", tract 48–060 is listed twice. Please delete the second reference.

(3) On page 30773, column one, "5. *Bonus Bidding With a Fixed Constant Royalty,"* in the last line "7" should appear as "17".

(4) On page 30775, column one, *Stipulation No. 2,* paragraph two, line two, insert "due" between "be" and "under".

(5) On page 30777, column one, *Stipulation* No. 12, line five, "interfer" should appear as "interfere".

(6) On page 30777, column three, the following form should be inserted after paragraph 17.

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.

Total amount bid

Amount per acre/hectare

Amount of cash bonus submitted with bid

Proportionate interest of company(s) submitting bid

Qualification No.

Percent interest

Company

Address

Signature

(Please type signer's name under signature)

Office of the Secretary

[INT-DES-79-29]

Jackson and Klamath Sustained Yield Units Timber Management Jackson, Klamath, Josephine, and Douglas Counties, Oreg.; Availability of Draft Environmental Statement and Public Hearings

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a draft environmental statement for the proposed 10-year timber management plan in the Jackson and Klamath Sustained Yield Units, southwestern Oregon. The proposal involves annual timber harvest of 20.55 million cubic feet (120 million bd. ft.) from public land administered by BLM in the units.

The Department of the Interior invites written comments on the draft statement to be submitted within 45 days of this notice to the State Director, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

A limited number of copies are available upon request to the State Director at the above address or the Medford District Office.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and C Streets NW., Washington, D.C. 20240.

Bureau of Land Management, Office of Public Affairs, 729 NE Oregon Street, Portland, Oregon 97208.

Bureau of Land Management, Medford District Office, 310 West 6th Street, Medford, Oregon 97501.

Library, University of Oregon, Eugene, Oregon 97403.

Library, Portland State University, Portland, Oregon 97203.

Library, Oregon State University, Corvallis, Oregon 97331.

Library, Southern Oregon State College, Ashland, Oregon 97520.

Oregon Public Libraries in Ashland, Butte Falls, Central Point, Eagle Point, Gold Hill, Grants Pass, Klamath Falls, Medford, Talent and White City.

Notice is also given that oral and/or written comments will be received at a formal public hearing held at the Medford Red Lion Motor Inn, June 27, 1979, 1:00 and 7:00 p.m.

Witnesses presenting oral comments should limit their testimony to ten (10) minutes. Requests to testify at the hearing should be submitted to the Medford District Manager (address above, telephone (503) 779–2330) prior to close of business June 25, 1979.

Dated: May 30, 1979.

Larry E. Meierotto,

Assistant Secretary.

[FR Doc. 79–17163 Filed 6–1–79; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–57]

Certain Cattle Whips; Opportunity for Public Comment on Proposed Consent Order Agreement

Notice is hereby given that the presiding officer in the above-captioned investigation has certified to the Commission for appropriate action a joint motion to terminate the investigation along with a consent order agreement signed by all the parties to the investigation. The investigation is being conducted pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The motion was docketed as Motion 57–10. Provision is made for the filing of such motions and agreements in § 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(a)).

The proposed consent order agreement directs that respondent Skyline Imports, Ltd., will not export certain whips to, and respondent Action Co. will not import certain whips into, the United States, and that Skyline will discontinue designating its whips as "#30 whips". Compliance with the agreement would be required after January 15, 1979, and until expiration of complainant's U.S. Letters Patent 3,356,294 on December 5, 1984, or until such time as the patent is held invalid by a final decision of a tribunal with competent jurisdiction. The agreement provides that respondents Skyline and Action will voluntarily submit to the Commission's jurisdiction; that respondents Skyline and Action and complainant Stockmen's, Inc., waive (1) further procedural requirements, including the requirement that the Commission make a determination under 19 U.S.C. 1337(c), (2) judicial review of the consent order, (3) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, and (4) any other challenge or contest to the validity of the consent order; and that once the order has been issued, Skyline and Action will be required to file one or more compliance reports. The agreement also provides that violation of the order may result in proceedings before the Commission to determine what, if any, sanction pursuant to 19 U.S.C. 1337 should be applied to such violation.

A copy of the proposed agreement is set forth below. Any interested member of the public is invited to submit written comments regarding the agreement. Such comments should be addressed to the Secretary, U.S. International Trade

Commission, 701 E Street, N.W., Washington, D.C. 20436, and should be received not later than July 5, 1979.

No public hearing before the Commission regarding this motion and agreement is contemplated at this time. The Commission will give consideration to requests for such a hearing if such requests are received not later than June 14, 1979.

Notice of institution of the investigation was published in the **Federal Register** of August 9, 1979 (43 FR 35398).

By order of the Commission.

Issued: May 30, 1979.

Kenneth R. Mason,

Secretary.

Consent Order Agreement

In the Matter of certain cattle whips.

The United States International Trade Commission having instituted, upon complaint of Stockmen's, an investigation, pursuant to its Notice of Investigation, issued August 4, 1978, of certain acts and practices of Skyline and Action in the exportation and importation of cattle whips to the United States, respectively, and it now appearing that Skyline, Stockmen's, and the Commission investigative attorney are willing to enter into an agreement containing an order to cease and desist from the acts and practices specified in the Consent Order incorporated herein.

It is hereby agreed by and between Skyline and Action, by its duly appointed officers; and Stockmen's by its duly appointed officers; and the Commission investigative attorney, Robert M. M. Seto, that:

I. For the purpose of this Consent Order Agreement and the enforcement hereof, Skyline, and Action having appeared and voluntarily submitted to the personal jurisdiction of the Commission by agreeing to this Consent Order Agreement, admits that the Commission has jurisdiction over the subject matter included in the August 4, 1978, Notice of Investigation.

II. This Consent Order Agreement is for settlement purposes only and does not constitute a finding by the Commission or an admission by Skyline and Action that section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) or any other statute on regulation, has been violated.

III. Skyline, Action, and Stockmen's, and the Commission investigative attorney, in agreeing to the entry of this Consent Order, waive (1) further procedural requirements, including the requirement that the Commission make a determination under section 337(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(c)), (2) judicial review of this Consent Order, (3) the requirement that the Commission's decision contain a statement of findings of fact and conclusion of law, and (4) any other challenge or contest to the validity of this Consent Order.

IV. This Consent Order Agreement contemplates that, if it is finally accepted by the Commission, the Commission may, without further notice to Skyline, Action, or Stockmen's, (1) issue its decision containing the following order to cease and desist in disposition of this investigation, and (2) make public information which is not "business confidential" as that term is defined in section 201.6 of the Commission's *Rules of Practice and Procedure.*

V. Skyline and Action have read the Order contemplated hereby, and they understand that once the Order has been issued, they will be required to file one or more compliance reports as therein specified, and that violation of the Order may result in proceedings before the Commission to determine what, if any, sanction should be applied to such violation including a possible order of exclusion from entry pursuant to 19 U.S.C. 1337(d).

Order

It is ordered that—

I

Subsequent to January 15, 1979 and until expiration to the Henry patent '294 on December 5, 1984, or until such time as the patent is held invalid by a final decision of a tribunal with competent jurisdiction, all whips exported by Skyline or any affiliated company, or imported by Action or any affiliated company, into the United States shall not have any portion of the inverted section of the braid cover extend over the terminal end of the whip shaft. Moreover, Skyline agrees to discontinue designating its whips as "#30 whips." This agreement settles the entire controversy between the parties relating to this subject matter.

II

Skyline and Action, by their chief executive officers, shall each file a properly notarized affidavit covering the period from the date this order becomes final through August 15, 1979, containing therein a detailed statement describing the extent of compliance with this Consent Order Agreement. Each affidavit and report shall be filed with the Commission by August 31, 1979. If the Skyline or Action fails to file its report as required or if the Commission has sufficient reason to believe, on the basis of the foregoing report, that the terms of this Order have been violated, the Commission reserves the rights to require such additional reports as are deemed necessary.

III

The reporting requirement of paragraph II of this Order will be reviewed by the Commission after the report due in 1979 is received in order to ascertain whether further reporting by Skyline or Action is necessary, as provided in paragraph II.

IV

For the purpose of securing compliance with this Order and during the period ending December 31, 1979, or any further period of reporting resulting from a determination by the Commission that it has sufficient reason to believe that Skyline or Action is in violation of this Order or has failed to file its report as provided in paragraph II of this Order, duly authorized representatives of the Commission shall, upon written request and on reasonable notice to Skyline or Action mailed to their principal office, be permitted reasonable access, during the office hours of the company, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the company solely for the purpose of verifying any matter contained in the reports required under paragraph II of the Order. Duly authorized representatives of the Commission shall also be permitted to interview appropriate officers and employees of Skyline or Action, who may have counsel present, regarding any such matters. Such verification and interviews are subject to any recognized privilege under the laws of the United States and are also subject to the reasonable convenience of the company.

V

Confidential information obtained by the means provided in paragraphs II, III, and IV, above, shall only be made available to the Commission or its representatives and shall not be divulged by any representative of the Commission, to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with the Order or as otherwise required by law, upon ten (10) days written notice to Skyline or Action.

This Order shall become effective on June 4, 1979.

Signed this 16th day of Feb. 1979.

William R. Spence,

Skyline Imports Ltd., P.O. Box 856, Red Deer, Alberta, Canada.

Donald M. Motsenbocker,

The Action Company, P.O. Box 528, McKinney, Texas 75069.

Gary G. Henry, Stockmen's, Inc., P.O. Box 244, Lawton, Iowa 51030.

Robert M. M. Seto,

Commission Investigative Attorney, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436.

[FR Doc. 79-17296 Filed 6-1-79; 8:45 am]

BILLING CODE 7020-02-M

[AA1921-Inq.-27]

Sugar From Canada; Commission Determines "A Reasonable Indication of Injury"

On the basis of information developed during the course of inquiry No. AA1921-Inq.-27, undertaken by the United States International Trade Commission under section 201(c) of the Antidumping Act, 1921, as amended, the Commission unanimously determines that there is a reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of sugar—dutiable under items 155.20 and 155.30 of the Tariff Schedules of the United States—into the

United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury.[1]

On April 25, 1979, the Commission received advice from the Department of the Treasury that, in accordance with section 201(c)(1) of the Antidumping Act, 1921, as amended, an antidumping investigation was being instituted with respect to sugar from Canada and that, pursuant to section 201(c)(2) of the act, information developed during Treasury's preliminary investigation led to the conclusion that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of such merchandise. Accordingly, the Commission, on May 1, 1979, instituted inquiry No. AA1921–Inq.–27 under section 201(c)(2) of the act to determine whether there is no reasonable indication that 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.

Public notice of both the institution of the inquiry and of the hearing was duly given by posting copies of the notice at the Secretary's office in the Commission in Washington, D.C., and at the Commission's office in New York City, and by publishing the original notice in the **Federal Register** of May 3, 1979 (44 FR 25950). A public hearing was held on May 10, 1979, in Washington, D.C., and all persons requesting the opportunity to appear were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested persons and information adduced at the hearing and obtained by the Commission's staff from questionnaires, personal interviews and other sources.

Statement of Reasons of Chairman Joseph O. Parker and Commissioners George M. Moore and Catherine Bedell

This inquiry under section 201(c) of the Antidumping Act, 1921, as amended, was instituted by the Commission after receiving advice from the Department of the Treasury that, during the course of a preliminary investigation with respect to a complaint filed under that act, Treasury had concluded that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of sugar from Canada classified under items 155.20 and 155.30 of the Tariff Schedules of the United States. Treasury's investigation was initiated after the filing of a complaint by Amstar Corp.

The petitioner alleges that because almost all the sugar from Canada is imported through customs districts located in the Northeastern/Eastern Great Lakes (NE/EGL) area of the United States, it is the domestic producers located in this region which are affected by the imports sold at less than fair value (LTFV). Official statistics show that more than 99 percent of sugar imported from Canada, almost all of which is refined, enters this area of the United States. Preliminary information developed during this inquiry indicates that because of the low value-to-weight ratio, the bulk of these imports are also marketed within this area. There are also indications that domestic refineries located in the NE/EGL area market most of their production with 250–300 miles of the refineries. Refiners located in this area responding to Commission questionnaires indicated that more than 85 percent of their output was sold to customers within this area. Thus, there is at least a reasonable indication that a distinct marketing area, as alleged by petitioner, may exist and must be considered in determining whether to terminate this investigation.

In each year since 1974, world production of sugar has been in excess of world consumption and has resulted in an accumulation of world stocks of more than 45 million metric tons of raw sugar, the equivalent of about one-half of annual world consumption. This inventory has had a significant downward impact on world sugar prices and has left large stocks of sugar to be marketed in the few remaining accessible markets of the world, of which the United States is one.

Since sugar is a fungible commodity, price is the primary factor in determining which sugar is purchased. With the world price of sugar at about one-half that at which it is supported by a Government program in the United States, a system of tariffs and fees has been instituted to attempt to prevent imported sugar from impairing this price support program. This system is based on world raw sugar prices, and together with transportation, handling costs, duties, and fees, is designed to raise the price of imported raw sugar to a fixed domestic target price. To the extent, however, that refined sugar can be imported into the U.S. market at or below the support price for refined sugar it can penetrate the U.S. market, if the quantities involved are within applicable quotas. Since Canada has joined the International Sugar Agreement, imports of refined sugar from Canada are subject only to an annual global quota of 6.9 million tons established by Presidential Proclamation No. 4610 on November 30, 1978.[2] To date this quota has not been filled.

Petitioner has alleged that sugar imported from Canada is being sold at LTFV margins ranging from 11 to 45 percent. These margins are based on price comparisons made during the first quarter of 1979. Petitioner alleges that by reason of these LTFV sales, imports from Canada have increased.

Prior to the expiration of the Sugar Act on December 31, 1974, the importation of refined sugar was virtually prohibited. With the expiration of the Sugar Act, imports of refined sugar from Canada increased from 1 ton in 1974 to 138,000 tons in 1977, the equivalent of about 4 percent of the primary distribution of sugar in the NE/EGL area by domestic producers. Although imports of refined sugar decreased in 1978 to 98,000 tons, this decrease is at least partially explained by the large tonnage imported at the end of 1977 to avoid the fees which were to be imposed under section 22 of the Agricultural Adjustment Act, as amended, effective January 1, 1978. Monthly import figures show that imports of refined sugar from Canada during the first quarter of 1979 were three times as much as in the first quarter of 1978 and twice as much as in the first quarter of 1977.

Information developed during the Commission's inquiry indicates that production by NE/EGL area producers declined from 1977 to 1978. There are also indications that employment and man-hours worked decreased and the profitability of these producers declined by more than 50 percent from 1977 to 1978.

The petitioner has contended that the alleged LTFV imports have caused it to lose sales. In particular, petitioner alleges that it has lost sales to industrial users of refined sugar such as soft-drink bottlers in Western New York State.

[1] Although the vote to continue Treasury's investigation is unanimous, the Commissioners voting state their determinations differently. Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell and Paula Stern state that they determine that there is a reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of sugar into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury. Chairman Joseph O. Parker states that he does not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of sugar into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury.

[2] Headnote 3, pt. 10(A), schedule 1, of the Tariff Schedules of the United States.

There are also allegations of sales lost by domestic producers in Michigan.

In order for the Commission to make a determination under section 201(c) of the Antidumping Act that an investigation should be terminated it must find that there is "no reasonable indication" of injury, or likelihood of injury by reason of the importation of the subject merchandise alleged to have been sold at LTFV. Thus, in an inquiry under section 201(c) the threshold for determining that an investigation should continue is lower than that which is ultimately required for a determination of injury under section 201(a). In our judgment, the criteria for terminating the Treasury investigation before petitioner has had an opportunity to fully present its case have not been satisfied. There are reasonable indications of injury or likelihood of injury by reason of alleged LTFV sales including increased market penetration, declining profitability, and underselling. On the basis of these factors and the applicable statutory criteria, we have determined that this investigation should not be terminated.

Statement of Reasons for Commissioners Alberger and Stern

Determination

On the basis of the information developed during the course of this inquiry, we determine that there is a reasonable indication that an industry in the United States is being or is likely to be injured [3] by reason of the importation of sugar into the United States from Canada allegedly sold at less than fair value (LTFV) as indicated by the Department of the Treasury.

Statutory Criteria of Section 201(c)(2)

Section 201(c)(2) of the Antidumping Act, 1921, as amended, under which this inquiry is being conducted, states, in effect, that if the Secretary of the Treasury (Treasury) concludes, during a preliminary investigation under the Antidumping Act, that there is substantial doubt regarding possible injury to an industry in the United States, he shall forward to the U.S. International Trade Commission (Commission) his reasons for such doubt. Upon receipt of the Secretary's reasons, the Commission shall, within thirty days, determine whether there is no reasonable indication that 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 merchandise allegedly sold in the United States at less than fair value. In making its determination in this inquiry, the Commission developed information from various sources and did not consider the information received from Treasury as determinative.

The Imported Article and the Domestic Industry

The imported article that is the subject of this inquiry is sugar from Canada imported under items 155.20 and 155.30 of the Tariff Schedules of the United States (TSUS). Virtually all of the imports consist of refined sugar which competes directly with domestically refined sugar over a geographic area spreading from Michigan to New England. The domestic product is refined in locations over the entire length of the United States. Almost all refined sugar produced along the Northeast Atlantic Seaboard is refined from raw cane sugar imported into the United States from countries other than Canada. In Michigan and Ohio, and elsewhere in the United States, refined sugar is produced either from raw cane sugar or directly from sugar beets.The petitioner claims that virtually all imports of sugar from Canada are sold in the United States at less than fair value (LTFV) and that the LTFV margins average 24 percent of the Canadian home-market price for bulk sugar and 13 percent of the Canadian home-market price for 5-pound bags of sugar.

A Reasonable Indication of Injury

In a thirty-day inquiry, to assess whether there is a reasonable indication of injury by reason of imports allegedly sold at less than fair value, the Commission relies on the same indicators as it does in a full-scale ninety-day investigation. Although the statutes give the Commission no specific direction on what factors to consider, the Senate Report on the Trade Act of 1974 (which amended the Antidumping Act of 1921), suggests we consider suppression or depression of prices, lost sales, and penetration of the U.S. market. Additionally, the Commission traditionally considers production, capacity, capacity utilization, consumption, inventories, employment, profits, and foreign capacity to produce for export. In this inquiry, we found reasonable indications of price depression or suppression, increased market penetration, declining profits, and reduced employment, particularly in one geographic area,[4] where over 99 percent of Canadian sugar enters the United States and is consumed. Other indicators do not contradict this finding. Some do not indicate clear injury at a national level and all are based on unconfirmed, preliminary, and/or incomplete data.

As in all such thirty-day cases, the period surveyed is necessarily limited by considerations of time and inconvenience to the respondents incurred in collecting data. In this inquiry, data were solicited for five years, 1974–1978. Analysis is complicated by the fact that 1974 was an exceptionally good year for the sugar industry. However, in making a determination under Section 201(c)(2), the Commission need only consider whether a "reasonable indication" of injury, or the likelihood thereof, exists, even if later examination of the full record mitigates against a final injury determination.

Capacity of the five domestic cane sugar refiners and beet sugar processors responding to Commission questionnaires increased gradually from 3.8 million short tons in 1974 to 4.0 million tons in 1977 and 1978. These producers accounted for about 35 percent of U.S. production of refined sugar in 1978. However, reported capacity in the Northeastern/Eastern Great Lakes (NE/EGL) area declined irregularly by about 5 percent during the same period.

In 1978, production of refined sugar by the five respondents, which account for an estimated 35 percent of total U.S. production, was 6.6 percent below the peak year of 1974. However, in the NE/EGL area, 1978 production was twenty percent below the level achieved in 1974.

Capacity utilization by the five reporting producers fell from full utilization in 1974 to 85 percent in 1975, but rose to an average of 93 percent during 1976–78. Those responding producers in the NE/EGL area reported approximately the same trends as were indicated for all U.S. producers, but experienced slightly lower capacity utilization in 1978.

Domestic consumption of refined sugar, as measured by the primary distribution of the domestic and imported products, fell from 10.5 million short tons in 1974 to 9.3 million tons in

[3] Prevention of establishment of an industry in this inquiry is not in question and will not be discussed further in these views.

[4] The Northeastern/Eastern Great Lakes (NE/EGL) area, in addition to the District of Columbia, consists of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont. Should this case come back to the Commission, before approaching the issue on a regional basis, we would look at the regional criteria we applied in *Sugar from Belgium, France, and West Germany*, Investigation No. AA1921-198, 199, and 200 (May 1979).

1975, increasing to 10.5 million tons in 1977, and falling again to 10.1 million tons in 1978.

U.S. producers' shipments of refined sugar, measured by primary distribution of the U.S.-produced product, generally follow the trends reported for consumption. Shipments fell in 1975 from the peak in 1974, rebounded almost completely in 1977, only to fall again in 1978 to a level four percent below the level reached in 1974. U.S. producers' shipments by NE/EGL area producers followed the same trend, but in 1978 were nine percent below the level set in 1974.

Yearend inventories of refined sugar by all refiners and processors that responded to the Commission's questionnaires rose from 300,000 short tons in 1974 to 539,000 tons in 1976 but fell in 1978 to 486,000 tons. Yearend inventories of refined sugar held by reporting producers in the NE/EGL area increased by nearly 40 percent from 1975 to 1977, but fell by 14 percent in 1978.

The average number of production and related workers employed in the production of refined sugar by four U.S. producers that reported such data to the Commission increased irregularly from 5,700 workers in 1974 to 6,500 workers in 1978. Employment by reporting firms in the NE/EGL area, however, showed a downward trend during the same period.

The partial data available to the Commission indicate that responding domestic sugar producers who principally sell their products in the NE/EGL area in competition with Canadian imports have experienced a decline in net profits in recent years. Such a decline may be at least partly attributable to the influx of Canadian sugar in 1977 and 1978. The principal area in which competition from the alleged LTFV imports occurs is in the NE/EGL area, which is supplied primarily by cane sugar refiners located on the Northeast Atlantic Seaboard and by sugar beet processors in Ohio and Michigan. If this case returns for a final determination, we will need much more complete information on the industry's profits for the nation as well as for this geographic area.

Market penetration by alleged LTFV imports from Canada rose from one short ton in 1974 to 138,000 tons in 1977, and then declined to 98,000 tons in 1978. Nearly 60 percent of the imports during 1977 occurred during the last four months of the year, taking advantage of exemptions from import fee increases proclaimed under Section 22 of the Agriculture Adjustment Act in 1977. The Section 22 fee increases became effective on January 1, 1978. Imports from Canada during the latter months of 1978 have been relatively high compared to the same months in earlier years; during January-March 1979, they were nearly triple the level of imports during the corresponding period of 1978 and more than double the level of imports during the corresponding period of 1977. Our data indicate that imports from Canada have been increasing their penetration of the U.S. market. The ratio of imports of sugar form Canada to consumption of sugar in the United States rose from a negligible level in 1974 to 1.3 percent in 1977 and 1.0 percent in 1978, while in the NE/EGL area the ratio of imports from Canada to consumption (primary distribution) of sugar rose from an insignificant level in 1974 to an average of 3.4 percent in 1977–78. It appears that the penetration for the first three months of 1979 may be even higher.

Lost sales in the Northeast have been alleged by the petitioner, but these have not been verified.

Canadian sugar allegedly has been sold for export to the United States at prices significantly below those of sales to Canadian markets. Prices reportedly received by the petitioner on its sales of refined sugar are significantly lower in areas of heavy concentration of the Candian imports than in areas which are not so heavily penetrated. This may indicate price suppression or depression. In the Detroit area, some Canadian sugar has reportedly been sold at prices below the price-support level.

With respect to the likelihood of injury, there is a possibility that declining sugar consumption in Canada and the present underutilization of Canadian refineries may result in increased sales of Canadian sugar which may be sold at LTFV margins on the U.S. market. Such increased sales could result in further increases in market penetration and present a possibility of injury in the future.

Conclusion

There are reasonable indications of reduced employment, declining profits, increased market penetration, and price suppression or depression, particularly in the NE/EGL area. It is conceivable the Commission could find that a regional market exists consisting of all or part of the NE/EGL area where import penetration is highest and that injury may be found in such a region. In this inquiry, we have relied on data for the entire area because the petitioner has claimed that this was the relevant impacted region. It appears that factors which have led the Commission in previous instances to find injury to a regional industry may be present, and we should not dismiss such a possibility. Therefore, based on our present information, we must conclude that there is a reasonable indication of injury by reason of possible LTFV imports from Canada.

By order of the Commission.

Issued: May 25, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-17285 Filed 6-1-79; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Proposed Consent Judgment in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *United States Steel Corporation*, Civil Action No. 79–709, has been lodged with the District Court for the Western District of Pennsylvania. The proposed decree establishes schedules to bring air pollution emissions at United States Steel Corporation's Clairton Works, Edgar Thomson Works, National-Duquesne Works, Saxonburg Plant and Homestead Works into compliance with the requirements of the Clean Air Act. In particular the decree covers emissions from defendant's Clairton coke plant, its basic oxygen process shops, thirteen blast furnaces, two sinter plants and an open hearth shop. The decree also establishes schedules for defendant to comply with the terms of the NPDES permits for the Clairton Works, the National-Duquesne Works, the Edgar-Thomson Irvin Works, the Homestead Works, the Vandergrift Plant, the Johnstown Plant and the Central Furnaces Plant. In addition the decree imposes certain stipulated penalty provisions for violations of its terms.

The Department of Justice will accept written comments relating to the proposed judgment received on or before June 29, 1979. Pursuant to § 50.7(c) of 28 CFR the public comment period has been shortened, because several compliance obligations under the Decree fall on or before July 1, 1979. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and refer to *"United States* v. *United States Steel Corporation,"* D.J. Ref. No. 90–5–2–3–1034.

The proposed decree may be examined at the Office of the United States Attorney, 7th and Grants Streets, Pittsburgh, Pennsylvania 15219; at the Region III Office of the Environmental Protection Agency, Enforcement Division, Curtis Building, 6th & Walnut Streets, Philapelphia, Pennsylvania 19106 and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2625, Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

Sanford Sagalkin,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-17297 Filed 6-1-79; 9:07 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Major Media Centers Section) to the National Council on the Arts will be held June 18 and 19, 1979, in room 1426, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 23, 1979.

[FR Doc. 79-17174 Filed 6-1-79; 8:45 am]

BILLING CODE 7537-01-M

Artists-in-Schools Advisory Panel; Meeting

Pursuant to Sec. 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Artists-in-Schools Advisory Panel to the National Council on the Arts will be hold June 25 and 26, 1979, from 9:00 a.m. to 4:30 p.m. and June 27, 1979, from 9:00 a.m. to 12:00 p.m., at Duke University, Durham, North Carolina.

This meeting will be open to the public on a space available basis. The topic for discussion will be New Program Directors and AIS Summer workshop.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 25, 1979.

[FR Doc. 79-17242 Filed 6-1-79; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel to the National Council on the Arts will be held June 21, 22, 23, 1979 from 9 a.m. to 5:30 p.m. in room 1426, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

A portion of this meeting will be open to the public on June 21, 1979, from 9 a.m. to 10 a.m. The topic of discussion will be orientation.

The remaining sessions of this meeting on June 21, 1979, from 10 a.m. to 5:30 p.m. and June 22 and 23, 1979, from 9 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

May 29, 1979.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 79-17243 Filed 6-1-79; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel to the National Council on the Arts will be held June 24, 1979, from 9:00 a.m. to 6:00 p.m., in room 1426, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on June 24, 1979, from 12:30 p.m. to 6:00 p.m. The topic of discussion will be Program Guidelines. There will also be a question and answer session at this time.

The remaining sessions of this meeting on June 24, 1979, from 9:00 a.m. to 12:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 29, 1979.

[FR Doc. 79-17244 Filed 6-1-79; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Emergency Core Cooling Systems (ECCS); Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold an open meeting on June 19–20, 1979 in Room 1046, 1717 H St., N.W., Washington, DC., 20555, to review ECCS models for small breaks in Babcock and Wilcox reactor systems. The Subcommittee will also review the proposed FY–81 NRC budget figures for ECCS-related research activities. Notice of this meeting was published in the **Federal Register** on May 24, 1979.

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

The agenda for subject meeting shall be as follows: *Tuesday, June 19 and Wednesday, June 20, 1979, 8:30 a.m. until the conclusion of business each day.*

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

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of Babcock and Wilcox, the NRC Staff, and their consultants, pertinent to the above topics.

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

Dated: May 29, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79–17083 Filed 6–1–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 48 to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment incorporates a new Section 6.12 of the Technical Specifications to provide greater flexibility regarding entry into high radiation areas.

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 action 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 April 23, 1979, and (2) Amendment No. 48 to License No. DPR–20, including the Commission's Evaluation contained in the letter of transmittal. 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 Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated At Bethesda, Maryland this 15th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 17251 Filed 6–1–79; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos.: 50–443 and 50–444]

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2); Request for Action Pursuant to 10 CFR 2.206

Notice is hereby given that by petition dated May 2, 1979, the Seacoast Anti-Pollution League, Portsmouth, New Hampshire, requested that the Director of Nuclear Reactor Regulation issue an Order suspending or revoking Construction Permit Nos. CPPR–135 and CPPR–136 issued for the Seabrook Station pending a determination that evacuation of persons within 30 miles of the site is feasible and the site is still acceptable after analysis of the consequences of a Class 9 accident.

This petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the petition within a reasonable time.

A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and in the local public document room for the Seabrook Station at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883.

Dated at Bethesda, Maryland, this 24th day of May, 1979.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79–17250 Filed 6–1–79; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant

reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

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

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

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

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

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

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

Comments and Questions

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

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

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

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Donald W. Barrowman—447–6202

New Forms

Farmer's Home Administration
Estimate and Certificate of Actual Cost
FMHA 1924 —13
On Occasion
Contractors and loan applicants, 1,200 responses; 2,400 hours
Charles A. Ellett, 395–5080

Food and Nutrition Service
Nutrition Information Pilot Project
Single Time
Various Children, 6–12; mothers; locations, 1,000 responses; 500 hours
Charles A. Ellett, 395–5080

Forest Service
Interview Schedule—Neighborhood Study in Selected U.S. Forest Service Districts Different Rates of Incendiary Fires
Single time
Household heads in selected forest neighborhoods, 300 responses; 126 hours
Charles A. Ellett, 395–5080

Revisions

Animal and Plant Health Inspection Service
Importation of Animals and Poultry and Animal/Polultry Products
VS–17–23
On occasion
Bird and Animal Importers, 17,555 responses; 4,191 hours
Charles A. Ellett, 395–5080

Food and Nutrition Service
*School Lunch, Breakfast, and Special Milk Program
Monthly report
FNS–806
Monthly
Schools—child care institutions, 22,000 responses; 7,260 hours
Charles A. Ellett, 395–5080

Extensions

Agricultural Marketing Service
*Cotton seed Prices (as quoted by cotton ginners)
CN–235–1 thru CN–235–23
Weekly
Cotton gins, 25,000 responses; 750 hours
Charles A. Ellett, 395–5080

Agricultural Stabilization and Conservation Service
*Application for Transfer of Allotment from Pool (farm owners displaced by eminent domain)
ASCS–178
On occasion
Producer whose allotment or NOA was pooled, 30,000 responses; 15,000 hours
Charles A. Ellett, 395–5080

Federal Crop Insurance Corporation
*Claim for Citrus Indemnity (adjustment of losses)
FOI–63
On occasion
Farmers, 2,500 responses; 625 hours
Charles A. Ellett, 395–5080

Food and Nutrition Service
Monthly Distribution of Donated Commodities to Special Groups
FNS–153
Monthly
Counties, cities, and Indian reservations, 528 responses; 528 hours
Charles A. Filett, 395–5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377–4217

New Forms

Bureau of the Census
Supplies Used During 1977
MA–131 (minerals)
Single time
Selected mineral establishments, 1,000 responses; 1,000 hours
Office of Federal Statistical Policy and Standard, 673–7974

Revisions

Bureau of the Census
Interview Rating Form—Crew Leader
D–269B1, D269B1
Single time
Applicants for Census jobs, 60,000 responses; 9,000 hours
Richard Sheppard, 395–3211

Extensions

Bureau of the Census
Supplementary Questionnaire for American Indians—1980 Census Dress Rehearsal (part of the 1980 decennial census)
D–15(x)
Single time
American Indian households on reservations and historical areas of Oklahoma, 1,890 responses; 1,890 hours
Office of Federal Statistical Policy and Standard, 673–7974

Maritime Administration
Conservative Dividend Policy Schedules A, B, & C
Annually
Subsidized steamship operators, 20 responses; 160 hours

Richard Sheppard, 395–3211
National Oceanic and Atmospheric Administration
Public Weather Requirements Survey Plan
Single time
Households in the SMSA's, 2,000 responses; 600 hours
Richard Sheppard, 395–3211

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697–1195

New Forms

Defense Civil Preparedness Agency
Three Mile Island Incident Survey
Single time
Sample households (mostly in a 40-mile radius to Three Mile Island) 1,500 responses; 2,250 hours
David P. Caywood, 395–6140

Extensions

Departmental and Other Inpatient Claims Form
DA 1863–1
On occasion
Hospitals/Providers of medical care, 700,000 responses; 350,000 hours
David P. Caywood, 395–6140

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert H. Linden—633–8477

Revisions

Pretest of Transportation Panel
EIA–141
On occasion
Sample of Households chosen from EIA–84, 2,252 responses; 1,794 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245–7488

New Forms

Alcohol, Drug Abuse and Mental Health Administration
Collection of Data on Community Support System Clients Using a Standard Form
Single time
Case managers at local CSS agencies
Richard Eisinger, 395–3214

Center for Disease Control
National Immunization Survey—Current Population Survey supplement 9/79
CPS–1
Single time
45,000 Interviewed hoseholds in September CPS sample, 45,000 responses; 5,250 hours

Office of Federal Statistical Policy and Standard, 673–7974

Food and Drug Administration
Intraocular Lens Investigational Device Exemption Application
On occasion
Manufacturers of intraocular lenses, 19 responses; 133 hours
Richard Eisinger, 395–3214

Food and Drug Administration
Multi-Purpose Food and Cosmetics Survey
Single-time
National probability samples of households
Richard Eisinger, 395–3214

Food and Drug Administration
The Safety and Efficacy of Supplemented Iron to Both Black and White School-aged Children
Single-time
School aged children
Richard Eisinger, 395–3214

Health Care Financing Administration (Medicaid)
Survey of State EPSDT Programs
HCFA–126T, I–126
Single-time
EPSDT coordinators/directors; 52 responses; 312 hours
Richard Eisinger, 395–3214

National Institutes of Health
*Protection of Human Subjects—Certification
HEW–596
On occasion
Research organizations; 30,000 responses; 2,490 hours
Richard Eisinger, 395–3214

Public Health Service
Pilot Study for the Revised Health Interview Survey
Questionnaire—Addendum
Single-time
Sample Hsehld Repre. the Civ. Noninst. pop of the U.S.; 100 responses; 58 hours
Off. of Federal Statistical Policy & Standard, 673–7974

Social Security Administration
Quality Review Questionnaire—Disability
SSA–4678
Single-time
Beneficiaries receiving title II payments; 3,000 responses; 1,000 hours
Barbara F. Young, 395–6132

Revisions

Health Care Financing Administration (Medicare)
General Intermediate Care Facility Survey Report
HCFA–3070 and A through D
Annually
Intermediate Care Facility and Inst. for Mentally Retarded; 2,400 responses; 384,000 hours
Richard Eisinger, 395–3214

Health Care Financing Administration (Medicare)
Request for Approval/Advance Approval as a Supplier of ESRD Services in the Medicare Program
HCFA–3402 and 3403
On occasion
Renal transp. and dialysis facilities; 1,000 responses; 366 hours
Richard Eisinger, 395–3214

Social Security Administration
Quality Review Questionnaires—Insured Individual, Spouse and Surviving Spouse and Children
SSA–2930, 2931, and 2932
Semi-annually
Beneficiaries receiving title II payments; 10,000 responses; 4,000 hours
Barbara F. Young, 395–6132

Extensions

Health Care Financing Administration (Medicare)
Outpatient Physical Therapy Provider Statement of Reimbursable Cost
SSA–2088
Annually
Rehab. Agcy. Clin. Pub. Health Agys. Prov. C/P, PT & SP. Path; 200 responses; 2,400 hours
Richard Eisinger, 395–3214

Health Care Financing Administration (Medicare)
Group Practice-Prepayment Plan Statement of Reimbursement Cost
HCFA–2017
Quarterly
Firms Prov. PT. E Serv. Outpat. Basis, Prepd Enrol. PCP.; 200 responses; 800 hours
Richard Eisinger, 395–3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Offices—John T. Murphy—755–5190

Extensions

Housing Production and Mortgage Credit
Application for Section 242 FHA Mortgage Insurance for Nonprofit Hospital Project
FHA–2013 (hosp.)
On occasion
Project Sponsors; 100 responses; 50 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Application for Project Mortgage insurance
FHA–2013/2013–NE–ICE

On occasion
All Multifamily Sponsors; 4,100 responses; 12,500 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Subdivision Sewage Disposal Effort
VA 26–1888; FHA–20840
On occasion
Landowners and Health Engrs.; 1,500 responses; 450 hours
Arnold Strasser, 395–5080

Housing Production and Mortgage Credit
Supplement to Subscription Agreement—Cooperative Management-type, etc.
FHA–3232A
On occasion
Applicants for Membership in a Esg. Cooperative; 150,000 responses; 37,500 hours
Arnold Strasser, 395–5080

DEPARTMENT OF JUSTICE

Agency Clearance Office—Donald E. Larue—633–3526

Extensions

Law Enforcement Assistance Administration [1]
Summary and Certification Sheet
Leep-5
Quarterly
Colleges and Universities; 4,260 responses; 4,260 hours
C. Louis Kincannon, 395–3772

DEPARTMENT OF LABOR

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

Extensions

Employment Standards Administration
41–CFR 60–2 and 41–CFR 60–60 (EEO Contract Compliance) CC–60–2 and CC–60–60
On occasion
Fed. Non-Const. Cont W/50 or more Emp and Cont of $50K or more
Arnold Strasser, 395–5080

DEPARTMENT OF TRANSPORTATION

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

Revisions

Federal Highway Administration
Guide for Reporting Highway Statistics
Annually
50 States, D.C., Guam, Virgin Islands, Puerto Rico, American Samoa; 2,268 responses; 62,485 hours
Susan B. Geiger, 395–5867

[1] This request for clearance has been determined to be subject to review by the Secretary of Health, Education, and Welfare under the provisions of the Control of Paperwork Amendments of 1978 (P.L. 95–561). It has been returned to the Department of Justice without action by the office of Management and Budget.

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—John J. Stanton—245–3064

New Forms

Request Analytical Methods for Pesticides In Wastewaters and for Single-time Relevant Samples
Pesticide Company managers and chemists; 28 responses; 924 hours
Edward H. Clarke, 395–5867

NATIONAL SCIENCE FOUNDATION

Agency Clearance Officer—Herman Fleming—634–4070

New Forms

Letter Inquiry on Impacted Regulations on University Researcher
Single-time
University faculty, 80 responses; 20 hours
Richard Sheppard, 395–3211

UNITED STATES INTERNATIONAL TRADE COMMISSION

Agency Clearance Officer—Robert Cornell—523–0301

New Forms

Importer's Questionnaire (porcelain-on-steel cooking ware)
Single-time
Porcelain-on-steel cooking ware, 40 responses; 160 hours
Susan B. Geiger, 395–5867

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management Division.

[FR Doc. 79-17303 Filed 6-1-79; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Doc. 301–18]

American Institute of Marine Underwriters

On May 25, 1979 the Chairman of the Section 301 Committee formally received a petition from the American Institute of Marine Underwriters alleging discriminatory and unfair trade practice and policies by the Government of Argentina. The petition was filed pursuant to Section 301 of the Trade Act of 1974. The text of the petition follows:

American Institute of Marine Underwriters

Chairman,
Section 301 Committee,
Office of the Special Representative for Trade Negotiations,
1800 G Street, N.W.,
Washington, D.C. 20506.

Dear Mr. Chairman: Pursuant to Section 301 of the Trade Act of 1974 [Pub. L. 93–618, 88 Stat. 1978; 19 U.S.C. § 2411 (Supp. 1977)] and Section 2006.0 et seq. of Title 15 of the Code of Federal Regulations, the American Institute of Marine Underwriters (AIMU) hereby submits this complaint against the discriminatory and unfair trade practices and policies of the Argentine Republic, such practices and policies being unjustifiable, unreasonable, and burdensome to United States commerce.

The complainant, the American Institute of Marine Underwriters, whose office is at 14 Wall Street, New York City, is a non-profit trade association of 125 insurance companies, each of which is authorized to engage in the business of marine insurance in one or more States of the United States. Collectively they underwrite more than 90 percent of the marine insurance written in the United States. Over the years AIMU and its members have contributed significantly to the growth and development of the American maritime industry and, at present, represent a significant share of what has come to be recognized as one of the world's leading insurance markets.

Marine insurance is a service vital to the proper functioning of international trade. The American marine insurance industry is interrelated with and makes significant contributions to the development of a strong international commerce for the United States. This industry facilitates the safe and inexpensive ocean transport of goods and raw materials, a service essential to the American economy. The American marine insurance industry also plays a significant role in the implementation of United States foreign policy and in our country's increasingly difficult attempt to maintain a favorable balance of payments position.

Traditionally, exporters and importers have been free to choose their own insurers from the highly competitive international insurance marketplace. This system has effectively and economically served world trade for many years. The Argentine Republic, however, severely restricts and hinders competition in the marine market so that virtually all insurance on exports and imports must be place with Argentine companies. The Argentine policies and practices discriminate against the American marine insurance market and restrict the freedom of the American exporter or importer, thereby burdening and restricting United States commerce and adversely affecting the United States balance of payments. Such trade barriers violate the prohibitions contained in Section 301(a) of the Trade Act of 1974 which expressly authorizes Presidential action when a foreign country—

(1) Maintains unjustifiable and unreasonable import restrictions which restrict and discriminate against United States commerce;

(2) Engages in discriminatory policies which are unjustifiable and unreasonable and which burden and restrict United States commerce; and

(3) Provides tax and other incentives that substantially affect the competitive position of the American marine insurance market in the commerce of the United States: 19 U.S.C. § 2411(a) (1)–(3) (Supp. 1977).

Argentina has a long history of discrimination against American marine insurers, discrimination which progressively eliminated American participation in the coverage on trade between the two countries. The Decree Law of June 13, 1947 (No. 12988) (Appendix B.) effectively barred American insurers from competing for the marine business on most exports or imports to or from Argentina. Article 14 of that law, amending Decree Law 15345, of 1946 (Appendix B.), required that all goods entering Argentina must be insured by Argentinian companies when the risk of loss is borne by the consignee. In a similar manner, all goods leaving the country must be insured by an Argentinian company when risk of loss by marine transport is borne by the shipper. Violation of these provisions is punishable by a fine of up to twenty-five times the value of the premium. The Ministry of Finance subsequently allowed foreign coverage on imports:

1. Where the merchandise is purchased f.o.b. delivery at a point in the Argentine;
2. On consignment; and
3. For sale through representatives or agents of a foreign firm when imported for the account of the principals.

Insurance officials have interpreted "f.o.b. delivery at a point in the Argentine" in a manner which in effect excludes the possibility of American coverage on f.o.b. shipments. Of course, American competition on C.I.F. shipments from the Argentine is precluded by the operation of Decree Law 12988 itself. Only when all customs duties, taxes and other charges are paid in the currency of the seller (i.e. dollars) can the goods be insured by Americans or other foreigners during marine transit. Of course, no Argentinian importer will want to pay such expenses in a foreign currency, particularly in view of restrictions on holdings in foreign currency imposed in Argentina.

In 1963 the Argentine government liberalized these restrictions on marine insurance coverage, primarily in response to the Magnuson amendment to the Mutual Security Act of 1954, S131(c). See ch. 301, 69 Stat. 283 (22 U.S.C. 2354) which provided that in cases where a country discriminates against any marine insurer authorized in the United States, the commodities, purchased with funds provided by the Mutual Security Act and destined for such country, must be insured in the United States against marine risks by a marine company authorized in the United States. As a result, Decree Law of December 27, 1963 (No. 14135) (Appendix C.) stated that because of the benefits to Argentina under the Alliance for Progress, any goods coming from the United States could be insured by a company authorized to do marine business in the United States.

This exemption from Argentine restrictive policies which U.S. marine insurance enjoyed was disappointingly short lived. A 1971 amendment limited the exemption to shipments related to the Alliance for Progress, only, to conform with the Argentine official policy of protection of its insurance system. [Decree Law of September 10, 1971 (No. 19229) (Appendix C.) See also excerpt from Bulletin Official, September 10, 1971. (Appendix D.)] The old law was in effect again. U.S. marine insurers were unreasonably and unjustifiably prohibited from competing on most risks in Argentine—U.S. commerce.

Barriers to U.S. participation in the coverage on marine risks on exports from Argentina to the United States were substantially increased by Decree 3255 of August 24, 1971, which established a system of tax refunds, ranging from 5% to 30%, for Argentine exporters who ship on Argentine vessels and insure with Argentine companies. (Appendix E.) The percentage refund is figured on an f.o.b. basis if a foreign carrier and a foreign insurer are used but in cases where an Argentine carrier and an Argentine insurer are contracted, the percentage is figured on a C.I.F. basis. These tax incentives severely hamper the competitive position of U.S. marine insurers in U.S.—Argentine trade.

Argentine discrimination against U.S. marine insurers extends beyond the unreasonable restrictions on U.S. participation in placement of insurance on marine risks. American marine insurers doing business in Argentina are placed at a competitive disadvantage by the compulsary cessions to the state-operated Reinsurance Institute. Argentine companies are also granted preferences on retrocessions from the Institute. (See Decree Law of June 13, 1947 (No. 12988), Articles 15–17, Appendix B and Reinsurance Institute Resolutions 4570 and 4573, Appendix F). In 1974 the definition of a foreign company doing business in Argentina was broadened to include those companies where 51% of the voting shares are in foreign hands. Prior law allowed 60%.

Argentine law also imposes a discriminatory tax on foreign companies admitted to do business in Argentina and premiums written by foreign companies have been subjected to a surcharge. Decree of November 17, 1946 (No. 12901). See Appendix G. Currency restrictions also make payments of losses in dollars difficult and insurance companies are restricted in the amount of foreign currency they may hold.

The Argentine Republic has succeeded in eliminating competition in the marine market in U.S.-Argentine commerce. It is evident that these restrictive trade policies have injured the U.S. marine insurance industry and burdened U.S. commerce. Exporters and importers in the United States have been denied freedom of choice in the placement of marine insurance. The Argentine restrictions and discriminatory policies have resulted in increased costs for marine insurance which are passed on to the consumer. Such Argentine discrimination has also resulted in substantial losses of premium to the American market, adversely affecting our balance of payments position. In 1954, the Association of Marine Underwriters made a study of the effects of Decree Law 12988. Over 1200 marine policies had been cancelled. Approximately $1,250,000 in premiums were lost to American commerce. American shippers and consignees had been deprived of the services of American underwriters and brokers. Some had incurred additional costs to secure protection by purchasing insurance on a contingency basis. The study found that the entire volume of trade between Argentina and the United States had been adversely affected—consumers, manufacturers, exporters, insurance agents and brokers, freight forwarders, bankers, in both Argentina and America had been injured.

Current U.S.-Argentina trade figures (Appendix A.), show that the U.S. marine insurance market has lost the opportunity to compete for as much as $64,000,000 in estimated premium during the years 1974–1977 as a direct result of Argentina's unjustifiable and unreasonable trade practices. This represents a sizable drain on the U.S. balance of payments position. Potential profits lost to the industry range from $2,078,000 to $3,463,000 during the same four-year period.

Since 1947 the American Institute of Marine Underwriters has contacted a number of government agencies with a view towards removing Argentine impediments to world trade. These efforts have been unsuccessful. There is no other means of redress of these unfair trade practices by the Argentine Republic than Section 301 of the Trade Act of 1974, which we hereby invoke.

It is the firm opinion of the American Institute of Marine Underwriters that the restrictions placed on insurance by the Argentine Republic are inconsistent with the reciprocal obligations of trading partners and violate the Treaty of Friendship, Commerce and Navigation 10 Stat. 1005 (Signed at San Jose July 27, 1853; entered into force December 20, 1854) (Appendix H.) Argentine discrimination against the American marine market is also inconsistent with the spirit of the Trade Agreement, 56 Stat. 1685 [Signed at Buenos Aires October 14, 1941 entered into force January 8, 1943. See especially Article XII(1)]. See Appendix L.

The goals of the Convention on the Intergovernmental Maritime Consultative Organization, (signed in Geneva, March 6, 1948) (Appendix I), especially Article I(b), are inhibited by such restrictions. In addition, we believe that these unjustifiable Argentine policies violate the United Nations Resolution on Development and International Economic Cooperation [Resolution of U.N. General Assembly, Seventh Special Session, September 16, 1975 (A/RES/3362 S–VII) (Appendix J.) in particular Article I (10)] and the G.A.T.T. Resolution on Freedom of Contract in Transport insurance, Recommendation of May 27, 1959 (See GATT Basic Instruments and Selected Documents, Supp. 8, p. 26) (Appendix K.)

The American Institute of Marine Underwriters hereby certifies that in connection with this complaint it has not filed for other forms of relief under the Trade Act of 1974 or any other Act.

Pursuant to Section 301 of the Trade Act of 1974, we respectfully request a public hearing on the foregoing complaint. Because these

impediments to international trade have injured the U.S. marine insurance industry and the American economy, relief is clearly merited. It is our hope that your office will conduct a review of the complained—of restrictions by the Argentine Republic and will urge the President to respond to such unjustifiable and unreasonable restrictions in the manner authorized by Section 301 of the Trade Act of 1974.

Respectfully submitted,

Thomas A. Fain,

President.

Enclosures: Appendix A. Appendices B–L may be obtained by writing to the Special Representative for Trade Negotiations.

Appendix A.—*Argentina (Estimated Marine Cargo Insurance Premium)*

	1977	1976	1975	1974	Total
U.S. Exports (a)	$2,482,300,000	$2,809,100,000	$3,056,200,000	$3,068,200,000	$11,435,800,000
U.S. Imports (a)	422,100,000	337,000,000	234,700,000	418,500,000	1,412,300,000
Total (Exports & Imports)	$2,904,400,000	$3,146,100,000	$3,290,900,000	$3,506,700,000	$12,848,100,000
Premium (b):					
(30¢)	$8,713,200	$9,438,300	$9,872,700	$10,520,100	$38,544,300
(50¢)	$14,522,000	$15,730,500	$16,454,500	$17,533,500	$64,240,500
Profit (c):					
(30¢)	$310,540	$1,120,800	$339,920	$306,660	$2,077,920
(50¢)	$517,560	$1,867,990	$566,530	$511,100	$3,463,180

(a) "Highlights of U.S. Export and Import Trade"—U.S. Dept. of Commerce.
(b) Cargo insurance rate of premium: 30¢ or 50¢—per $100 of value.
(c) Based upon AIMU's operating surveys which revealed a combined loss and expense ratio: 1977—96.436%; 1976—88.125%; 1975—96.557%; and 1974—97.085%.

Interested parties are invited to submit views on the petition. Such views should conform to the procedure for Section 301 complaints and reviews found in Title 15 of the Code of Federal Regulations, (Chapter 20 Part 2006) views should be submitted in 20 copies and sent to the attention of Chairman, Section 301 Committee Room 715, Office of the Special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506. Any such submissions should be received in the Office of the Special Representative for Trade Negotiations by July 2, 1979.

Shirley Coffield,

Chairman, Section 301 Committee.

[FR Doc. 79-17190 Filed 6-1-79; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 668]

Donna, Tex.; Application for International Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing the construction, operation and maintenance of an international bridge in the Donna, Texas area. The application has been filed by the City of Donna, Texas, for a permit authorizing a highway bridge connecting Donna and the Lower Rio Grande Valley area to the Rio Bravo area of Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972, (Pub. L. 92–343, 86 Stat. 731) approved September 26, 1972).

As required by E.O. 11423, the Department is circulating this application to concerned agencies for comment. In addition, the Office of Environmental Affairs of the Department of State is initiating an assessment of the environmental effects of the proposal to determine if an environmental impact statement will be required.

Interested persons may submit their views regarding this application in writing by July 1, 1979, to Mr. Franklin K. Willis, Assistant Legal Adviser for Economic and Business Affairs, Room 6420, Department of State, 2201 C Street NW., Washington, D.C. 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for Economic and Business Affairs during normal business hours.

Any questions relating to this notice may be addressed to Mr. Willis at the above address (phone (202) 632–0242), or to Mr. George Lehner (phone (202) 632–0349) of that office.

Dated: May 21, 1979.

Franklin K. Willis,

Assistant Legal Adviser for Economic and Business Affairs.

[FR Doc. 79-17186 Filed 6-1-79; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 670; Delegation of Authority No. 107–5]

Human Rights and Humanitarian Affairs—Migration and Refugee Assistance

By virtue of the authority vested in me by the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.) (hereinafter referred to as the Act), Executive Order No. 11077 of January 24, 1963 (3 CFR 1959–1963 compilation 698) hereinafter referred to as the Order), section 4 of the Act of May 26, 1949, as amended (22 U.S.C. 2658), and as Secretary of State, it is ordered as follows:

(1) Sections 1 and 2(a) of Delegation of Authority No. 107–4 (42 FR 918), is deleted.

(2) Exclusive of the functions delegated to the Deputy Under Secretary of State for Management (now the Under Secretary of State for Management) by section 3 of Delegation of Authority No. 107–4. there are hereby delegated to the deputy Assistance Secretary of State for Refugee and Migration Affairs, all functions conferred upon the Secretary of State by the Act and the Order.

In carrying out functions under this delegation, the Deputy Assistant Secretary for Refugee and Migration Affairs shall receive policy guidance from, and report to, the Coordinator for Refugee Affairs.

Dated: May 4, 1979.

Cyrus R. Vance,

Secretary of State.

[FR Doc. 79-17286 Filed 6-1-79; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[79-084]

New York Harbor Vessel Traffic Service Advisory Committee; Open Meeting

The New York Harbor Vessel Traffic Service Advisory Committee will conduct an open meeting on Wednesday, June 20, 1979, in the

Conference Room, 2nd floor, United States Coast Guard Marine Inspection Office, Battery Park Building, New York, N.Y. 10004. The meeting is scheduled to begin at 10:00 a.m.

The agenda for this meeting of the New York Harbor Vessel Traffic Service Advisory Committee is as follows:

1. Status report on the implementation of the New York Vessel Traffic Service presented by the Vessel Traffic Service Staff.

2. Discuss level of participation by vessels upon commissioning of the New York Vessel Traffic Service.

3. Comments and questions from the floor.

The New York Harbor Vessel Traffic Service Advisory Committee was established by the Commander, Third Coast Guard District to advise on the need for, and development, installation and operations of a Vessel Traffic Service for New York Harbor.

Members of the Committee serve voluntarily without compensation from the Federal Government, either travel or per diem.

Interested persons may obtain additional information or the summary of the minutes of the meeting by writing to:

Commander W. P. Leahy, Jr., USCG, Commanding Officer, New York Vessel Traffic Service, Precommissioning Detail, Governors Island, New York, New York 10004, or by calling (212) 668–7954.

This Notice is issued under section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1).

Dated: May 31, 1979.

L. L. Zumstein,

Rear Admiral, U.S. Coast Guard, Chief, Office of Public and International Affairs.

[FR Doc. 79-17328 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 134—Electronic Test Equipment for General Application; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 134 on Electronic Test Equipment for General Application to be held June 28–29, 1979, in Conference Room 9A–B, DOT/Federal Aviation Administration Building, 800 Independence Avenue SW., Washington, D.C., commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting held April 19–20, 1979; (3) Briefings on the Future of Multiple Award Contracting and the Federal Supply Schedules; (4) Review and Approval of Issue Paper on Wasteful Cost of Obsolescence; (5) Review and Approval of Issue Paper on Effects of Technological Advances on Electronic Test Equipment; (6) Discussion of other Issue Papers; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; (202) 296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 29, 1979.

Karl F. Bierach,

Designated Officer.

[FR Doc. 79-17189 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

1970–73 Ford Maverick and 1971–73 Mercury Comet; Public Proceeding Rescheduled

A public proceeding scheduled for 10 a.m., May 29, 1979, in Room 2230, Department of Transportation Building, 400 Seventh Street, S.W., Washington, D.C. 20590, with respect to fuel system integrity in 1970–73 Ford Maverick and 1971–73 Mercury Comet automobiles is rescheduled for 10 a.m., July 13, 1979 at the same location at the request of Ford Motor Company. At that time the Ford Motor Company is expected to present data, views and arguments showing that there is no safety related defect in the 1970–73 Ford Mavericks and 1971–73 Mercury Comets.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Joyce Tannahill, Office of Defects Investigation, National Highway Traffic Safety Administration, Room 5326, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–426–2850) before close of business on June 29, 1979.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street, S.W., Washington, D.C., 20590.

(Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.51 and 49 CFR 501.8.)

Issued on May 25, 1979.

Lynn L. Bradford,

Acting Associate Administrator for Enforcement.

[FR Doc. 79-17024 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-59-M

Federal Railroad Administration

[FRA Emergency Order No. 11—Notice 6]

Emergency Order Limiting Movement of Hazardous Materials; Resumption of Administrative Hearing

On February 7, 1979, the Federal Railroad Administration (FRA) issued Emergency Order No. 11 placing certain restrictions on the movement of railroad freight cars containing materials required to be placarded in accordance with DOT regulations, 49 CFR Parts 170–189 (placarded hazardous materials cars), by the Louisville and Nashville Railroad Company (L&N), and by other railroads over L&N owned or leased track (44 FR 8402). That Order was subsequently amended on February 16, 1979 (44 FR 10559).

Under the authority of 45 U.S.C. 432 and 49 CFR 211.47, the L&N requested an administrative hearing on Emergency Order No. 11 on February 28, 1979. The hearing on this matter commenced before Administrative Law Judge Samuel Kanell on March 19, 1979. The hearing was recessed on March 20, 1979, and was suspended on March 26, 1979, pursuant to a stipulation between the parties, FRA and L&N. This stipulation provided that either party could request reopening of the hearing.

By motion dated May 17, 1979, L&N requested that the administrative hearing be resumed. The hearing will be reconvened on June 11, 1979, at 9 a.m., in a hearing room to be announced, at the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20462. Administrative Law Judge Samuel Kanell will preside at the hearing.

Further information concerning this matter may be obtained by contacting Kenneth Gradia, Office of Chief Counsel, Federal Railroad Administration (202–426–8220).

Issued in Washington, D.C., on June 1, 1979.

John M. Sullivan,

Administrator, Federal Railroad Administration.

[FR Doc. 79-17447 Filed 6-1-79; 11:30 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

Granting of Relief From Firearm Disabilities Imposed by Federal Laws Due to Convicted Crimes

Notice is hereby given that pursuant to 18 U.S.C. Section 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Bandhauer, Roy C., Jr., 18025 Blackbird Drive, Reno, Nevada, convicted on May 7, 1975, in the District Court of Jewell County, Mankato, Kansas.

Barnes, Edward D., Route 1, Box 62, Roaring River, North Carolina, convicted on November 19, 1975, in the United States District Court, (Middle District, North Carolina) in Wilkesboro, North Carolina.

Batey, Dennis T., Route 2, Box 1327, Port Angeles, Washington, convicted on January 12, 1967, in the Cowlitz County Superior Court, Washington.

Bill, Richard M., P.O. Box 283, Wapato, Washington, convicted on March 8, 1958, in the Yakima County Superior Court, State of Washington.

Blackburn, Brady, Route 1, Box 134, Roaring River, North Carolina, convicted on November 20, 1959, United States District Court, Wilkesboro, North Carolina.

Bourgeois, Louis P., Sr., 607 S. Dunsmuir Avenue, Los Angeles, California, convicted on March 15, 1963, Superior Court, County of Middlesex, Massachusetts.

Breneman, Paul H., Bender Mill Road, R.D. #2, Lancaster, Pennsylvania, convicted on November 17, 1931, in the Court of Common Pleas, Lancaster, Pennsylvania.

Brown, Doffs Ned Ray, Route 2, Box 38, Ponce de Leon, Florida, convicted on October 10, 1958, in the United States District Court, Northern District of Florida.

Burgoon, David L., RD #1, Box 51-A, West Sunbury, Pennsylvania, convicted on June 11, 1968, in the Court of Oyer and Terminer, Butler County, Pennsylvania.

Clutts, Kenneth D., 11491 Clairmont Drive, Fenton, Michigan, convicted in November 1950, in the Circuit Court for the County of Bay, Michigan; on June 25, 1951, and on October 14, 1954, in the Circuit Court for the County of Genesee, Michigan.

Dandridge, James E., 1606 N. 22nd Street, Richmond, Virginia, convicted on July 1, 1964, in the Circuit Court of Virginia, Richmond, Virginia.

Etheridge, Robert W., Box 337, Ryan, Oklahoma, convicted on August 22, 1962, in the District Court of Stephens County, Oklahoma.

Franklin, Bob B., General Delivery, Mead, Washington, convicted on May 4, 1965, in the United States District Court for the District of Idaho, Northern Division.

Hansen, Iwin R., 1640 South 1st Avenue, Pocatello, Idaho, convicted on November 22, 1961, in the Third District Court, Salt Lake County, Utah; on June 13, 1968, in the District Court of the Second Judicial District, Davis County, Utah; and on June 24, 1968, in the District Court of the Third Judicial District, Salt Lake County, Utah.

Hills, Lawrence B., 628 North H Street, Lakeview, Oregon, convicted on June 24, 1968, in the Polk County Circuit Court, Oregon.

Huggins, William, Route 1, Box 121, Ingleside, Texas, convicted on February 6, 1959, in the District Court of San Patricio County, 36th Judicial District, Texas.

Humphrey, Roger L., 5214 55th Avenue, Kenosha, Wisconsin, convicted on October 22, 1953, in the Circuit Court, Midland County, Michigan.

Johnson, Robert G., Jr., Route 2, Box 162, Ronda, North Carolina, convicted on November 27, 1956, in the United States District Court, Middle Judicial District, Wilkesboro, North Carolina; and on October 19, 1959, in the Superior Court, Franklin County, North Carolina.

Kottke, Gordon V., 6000 Parkview Road, Greendale, Wisconsin, convicted on June 14, 1977, in the United States District Court, Eastern Judicial District of Wisconsin, Milwaukee, Wisconsin.

Lambert, Robert J., 1534 Lincoln Street, Mobile, Alabama, convicted on August 20, 1941, Mobile County, Alabama.

L'Heureux, Robert D., P.O. Box 634, Marianna, Florida, convicted on June 20, 1966, in the Circuit Court, Ninth Judicial Circuit of Florida, in and for Martin County.

Long, Raymond, 712 Benton Blvd., Kansas City, Missouri, convicted on May 4, 1972, in the Lafayette County District Court, Lexington, Missouri.

McClure, Charles D., P.O. Box 123, Shirley, Indiana, convicted on July 9, 1968, in the Indiana Circuit Court, Jefferson County, Indiana.

McDermott, J. Ray and Company, Inc., P.O. Box 60035, New Orleans, Louisiana, convicted on February 27, 1978, in the United States District Court for the Eastern District of Louisiana.

Meredith, Leon, 7612 S. Broadway, Los Angeles, California, convicted on or about October 31, 1951, in the United States District Court for the Western District of Tennessee.

Morgan, Ricky A., 15613 12th SW., Seattle, Washington, convicted on February 12, 1975, in the Superior Court of the State of Washington, for the County of King.

Morrison, Carl C., Peachtree Apt. No. 2, High Street, Pikeville, Kentucky, convicted on November 15, 961, in the Circuit Court, Pike County, Kentucky.

Perry, Joseph L., III, General Delivery, Sundance, Wyoming, convicted on April 19, 1976, in the District Court of Iowa, Jasper County, Iowa.

Ripple, James J., Jr., 1014 S. 26th Street, Milwaukee, Wisconsin, convicted on February 25, 1952, in the Court of Common Pleas, Lucas County, Ohio.

Rutell, Woody C., 10770 Clow Corner Road, Dallas, Oregon, convicted on March 29, 1977, in the United States District Court, Oregon Judicidal District.

Schweitzer, Jerome J., Westown Trailer Court, Jamestown, North Dakota, convicted on November 15, 1972, in the District Court, Fourth Judicial District, Stutsman County, North Dakota.

Shephard, Henry F., Route 1, Box 288, Roaring River, North Carolina, convicted on May 22, 1940, and on May 1, 1948, in the United States District Court for the Middle District, North Carolina, in Wilkesboro, North Carolina.

Shephard, William T., Route 1, Box 288, Roaring River, North Carolina, convicted on May 15, 1967, in the United States District Court, Wilkesboro, North Carolina.

Smart, William A., 3032 Van Dyke, Detroit, Michigan, convicted on October 26, 1956, and on August 10, 1961, in the United States District Court, Eastern District of Michigan, Southern Division.

Smith, David R., P.O. Box 231, Pe Ell, Washington, convicted on March 15, 1973, in the Superior Court of the State of Washington, Pacific County.

Smith, James E., 2404 Richardson Street, Mobile, Alabama, convicted on May 16, 1962, in the Circuit Court, Tenth Judicial District, Jefferson County, Alabama.

Stubbs, James W., 2701 Ashe Street, Durham, North Carolina, convicted on May 19, 1971, and on June 6, 1972, in the Cumberland County Superior Court, North Carolina.

Swinford, Steven R., R.R. 5, Box 102, Noblesville, Indiana, convicted on July 23, 1970, in the Indiana Circuit Court, Hamilton County.

Terry, Paul M., Box 99B, Ohio River Road, Greenup, Kentucky, convicted on November 16, 1972, in the Boyd County Circuit Court, Catlettsburg, Kentucky.

Thomas, Edward E., 614 East 55th Street, Tacoma, Washington, convicted on August 12, 1966, in the Superior Court of the State of Washington, for the County of Pierce.

Thorne, Richard S., 3136 Grand Avenue, Kansas City, Missouri, convicted on June 7, 1976, in the United States District Court for the District of Kansas.

Tipton, James R., Route 2, Box 539, Brownsville, Texas, convicted on April 19, 1971, in the United States District Court,

Southern District of Texas, Laredo Division.

Tripp, Jack W., 410 W. 12th Street, Juneau, Alaska, convicted on March 3, 1972, in the United States District Court, Western District of Washington.

Vickers, Walter L., 641 Bel Air, Front Royal, Virgina, convicted on March 3, 1975, in the Circuit Court, Warren County, Virginia.

Washington, Joseph E., P.O. Box 342, Deposit, New York, convicted on September 21, 1966, in the Supreme Court of the State of New York.

Weldon, Vern, 2200 SW. Nolan Lane, West Linn, Oregon, convicted on February 17, 1958, in the Circuit Court of the State of Oregon, Clackamas County.

Wells, Donald L., Route 10, Box 29, Yakima, Washington, convicted on August 31, 1970, in the Superior Court of the State of Washington, in and for Yakima County.

Willhoite, Harold D., Route 2, Box 236, Morgantown, Indiana, convicted on October 25, 1965, in the Morgan Superior Court, Indiana.

Young, William, 3646 Salem Walk, Northbrook, Illinois, convicted on July 11, 1973, in the Criminal Court of Lake County, Indiana.

Signed at Washington, D.C. this 30th day of April, 1979.

G. R. Dickerson,

Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc. 79-17186 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

Pig Iron From Brazil; Preliminary Countervailing Duty Determination

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

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: The notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the Government of Brazil has given benefits which may constitute bounties or grants on the manufacture, production or exportation of pig iron. A final determination will be made no later than November 20, 1979. Interested persons are invited to comment on this action.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Operations Officer, Technical Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229, telephone (202 566-5492).

SUPPLEMENTARY INFORMATION: On February 13, 1979, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the **Federal Register** (44 FR 9452). The notice stated that a petition had been received alleging that benefits conferred by the Government of Brazil upon the manufacture, production, or exportation of pig iron constitute the payment or bestowal of bounties or grants, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purposes of this notice, "pig iron" includes merchant pig iron of basic, foundry, malleable, and low phosporous grades, and is classified under item number 607.1500 of the Tariff Schedules of the United States Annotated (TSUSA).

On the basis of an investigation conducted pursuant to §159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been determined preliminarily that certain programs of the Government of Brazil provide benefits to manufacturers and/or exporters of the subject merchandise which may constitute bounties or grants within the meaning of section 303 of the Act. These benefits have been conferred under the following programs:

(1) Excessive remission upon export of the Industrial Products Tax (IPI), a value-added tax. The excessive remission consists of the granting, upon export, of an IPI tax credit greater than the IPI actually incurred during the production process. These credits can be used by the firm to offset other taxes owed and in limited circumstances can be transferred from one firm to another. To the extent the excessive credits have been utilized by pig iron manufacturers/exporters to reduce other tax liabilities or have been transferred for cash value, a bounty or grant would exist. No information has been provided to date regarding the utilization of these credits in the pig iron industry.

(2) Benefits under the "Entreposto Aduaneiro" system, which permits small producers of pig iron to receive a remission of both the IPI tax and the IPI tax credits immediately upon the sale of a product to licensed trading companies, rather than at the time of export, the date normally applicable. As described in number 1 above, the excessive remission of the IPI tax would, if utilized, consitute the bestowal of a bounty or grant.

Under the Entreposto Aduaneiro, small firms may receive an additional benefit as a result of the advance receipt of both the IPI tax remission and special IPI credit i.e., receipt prior to the time of exportation. In the past, Treasury has considered certain delays experienced by manufacturers/exporters in receiving export subsidies as a legitimate deduction in calculating a net amount of bounty or grant within the meaning of the Act. Analogously, advance receipt of tax credits by manufacturers/exporters would increase the net amount of bounty or grant.

Insufficient information has been presented to date to allow for the calculation of the possible net benefit received by pig iron manufacturers/exporters which have been eligible under the program.

(3) Preferential credit arrangements for the production of pig iron destined for export under Resolution 398 and preferential export financing under Resolution 331. Under Resolution 398, pig iron manufacturers can receive working capital financing up to 30 percent of the value of the previous year's exports at interest rates below those available commercially for loans of identical terms. The loans are also exempted from a ⅓ compensating balance required on other commercial loans and a 1 percent financial transactions tax. Under Resolution 331, advances for up to 180 days are made to pig iron exporters at interest rates below those available commercially for loans of identical terms against contracts denominated in foreign currency and foreign exchange denominated receivables.

(4) Reduction in taxable income by the percentage of total sales accounted for by export sales. In *Textile Products from Brazil*, (43 FR 53423-24, November 16, 1978), the Treasury Department stated that

> [w]hile export earnings are exempted from the payment of income taxes and [are] therefore a bounty, the possible benefits derived therefrom were not computed into the final bounty in view of the uncertainty of the overall tax effect of IPI/ICM credits, which themselves are treated as income.

In the absence of information from respondents or the Government of Brazil concerning the actual experience of the pig iron industry with regard to utilization of the IPI credits, the relationship between export and domestic sales, and the profitability of the firms under investigation, this program is preliminarily considered a bounty or grant.

It is further preliminarily determined that the following programs have not been utilized by manufacturers in the Brazilian pig iron industry and therefore benefits have not been paid which would constitute the bestowal of bounties or grants within the meaning of section 303 of the Act.

(a) Excessive remission upon export of indirect taxes other than the IPI, including a transportation tax.

(b) Exemption from payment of Customs duties and value-added taxes on the plant and on equipment imported for the production of pig iron for export. These benefits are conferred under programs of the Industrial Development Council (CDI) and the Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX).

(c) Preferential credit arrangements for the storage of pig iron destined for export under Resolution 330 and preferential export financing under Resolution 68. Under Resolution 330, financing is available for the storage of goods destined for export which are stored in bonded warehouses. The financing is available at preferential rates and can be applied to 80 percent of the value of goods. Under Resolution 68, the Export Finance Fund (FINEX) provides (1) direct financing of exports denominated in foreign currency up to 85 percent of the invoice value, (2) financing for Brazilian manufacturers exporting on consignment and (3) direct financing for foreign importers.

(d) Accelerated depreciation for plant and equipment manufactured in Brazil for production of pig iron for export.

(e) Tax credits available to firms located in Brazil's less developed regions as administered by the Superintendency for the Development of the Northeast (SUDENE) and the Superintendency for the Development of the Amazon (SUDAM).

Before a final determination is made, consideration will be given to any relevant data, views, or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commission of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office no later than July 5, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended by (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954 and § 159.47(c) of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,

General Counsel of the Treasury.

May 29, 1979.

[FR Doc. 79-17253 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-22-M

Office of the Secretary

Condenser Paper From Finland; Antidumping: Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that kraft condenser paper from Finland is being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. The case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 27, 1978, a petition in proper form was received pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of Crocker Technical Papers, Inc., Kimberly-Clark Corp., and the Stevens Paper Mill, Inc., domestic producers of the subject merchandise, alleging that condenser paper from Finland is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as the "Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the **Federal Register** of August 8, 1978 (43 FR 35137). A "Withholding of Appraisement Notice" was published in the **Federal Register** on February 20, 1979 (44 FR 10452).

In the Antidumping Proceeding notice and the Withholding of Appraisement notice, condenser paper was described as capacitor tissue or condenser paper as provided for in item numbers 252.4000 and 256.3080 of the Tariff Schedules of the United States Annotated (TSUSA). It has been determined that the product coverage should be limited to kraft condenser paper. For purposes of this investigation, "kraft condenser paper" means capacitor tissue or condenser paper containing 80 percent or more by weight chemical sulphate or soda wood pulp based on total fiber content as provided for in item numbers 252.4000 and 256.3080 of the TSUSA. These numbers are used for guidance purposes and not intended to limit the scope of the product coverage.

Determination of Sales at Less Than Fair Value

On the basis of the information developed in this investigation and for the reasons noted below, I hereby determine that kraft condenser paper from Finland is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which This Determination Is Based

a. *Scope of the Investigation.* Virtually all of the imports of the subject merchandise from Finland were exported to the United States by Tervakoski Oy ("TOY"). The investigation was therefore limited to sales by TOY.

b. *Basis of Comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and sales for exportation to countries other than the United States of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since adequate numbers of sales to the United States were made to unrelated customers. Sales to the producer's related U.S. subsidiary for processing and resale were not considered in this determination because they accounted for less than 20 percent by volume of all sales to the United States.

Sales for exportation to Brazil were used for fair value purposes, in accordance with § 153.3, Customs Regulations (19 CFR 153.3), since less than 5 percent of such or similar merchandise sold to markets other than the United States was sold in the home market. This does not provide a sufficient basis for establishing fair value. Sales to Brazil were selected as the basis for comparison because

transactions between Finland and Brazil were most comparable to those between Finland and the United States. Petitioners urged selection of a third country other than Brazil; however, the merchandise sold to that other country was not identical to that sold in the United States. Brazil was chosen because it is the market most like the United States, in terms of quantities sold, dates of sales, and nature of market, in which similar merchandise was sold.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was sought concerning imports and sales to countries other than the United States during the period February 1, 1978, through July 31, 1978.

c. *Purchase Price.* For purposes of this determination, purchase price has been calculated on the basis of the duty-paid delivered price in the United States. Deductions were made for Finnish inland freight, ocean freight and insurance, brokerage fees, duty, and U.S. inland freight.

Approximately 20 percent of the sales to the United States were further processed before being shipped to unrelated customers in the United States. However, because sufficient purchase price sales remain for comparison purposes, exporter's sales price has not been used in this determination.

d. *Sales for Exportation to Countries Other Than the United States.* For purposes of this determination, the sales price for exportation to countries other than the United States has been calculated on the basis of the f.o.b. price to an unrelated purchaser in Brazil. Adjustments were made for differences in packing costs and commissions. A deduction was made for Finnish inland freight.

TOY claimed an adjustment under § 153.10, Customs Regulations (19 CFR 153.10), for differences in the warehousing expenses incurred on shipments to the United States and Brazil. These expenses were not directly related to the sales under consideration and therefore were disallowed.

A claim was made by TOY for adjustments under § 153.11, Customs Regulations (19 CFR 153.11), for differences in merchandise. The manufacturer incurs lower production costs in producing ballast as compared to non-ballast condenser paper because of production in larger volumes and long lead times in ordering this paper. Non-ballast paper, however, is identical to ballast paper. Since the different costs of production are not caused by differences in merchandise, the claimed adjustment has not been allowed. An adjustment based on § 153.10, Customs Regulations (19 CFR 153.10) may have been appropriate for the differing circumstances of selling ballast and non-ballast papers. However, TOY did not present data permitting quantification of any such adjustment. If adequate data of this sort is presented, an adjustment under § 153.10, Customs Regulations (19 CFR 153.10) may be proper in the assessment of actual dumping duties, should that occur following consideration of the case by the U.S. International Trade Commission.

TOY claimed an adjustment under § 153.15, Customs Regulations (19 CFR 153.15), for differences in the levels of trade in sales to the United States as compared with those to Brazil. Treasury has consistently interpreted § 153.15 of the Customs Regulations (19 CFR 153.15) as precluding use of third country sales (outside of those used for fair value purposes) and sales to the United States as a basis for making a level of trade adjustment. Comparisons between the prices to the United States and those in the foreign market being used in this determination are made at the same or nearest level of trade in each market. If there are no sales in the foreign market at a particular level of trade at which sales to the United States are made, no adjustment can be made in the absence of demonstrable cost differences to the seller between the two levels of trade involved.

In the past, Treasury has considered quantity discounts or differences in circumstances of sale, to the extent the requirements for such adjustments can be satisfied, which have reached results comparable to a level of trade adjustment. In this case, no actual quantification of such differences was presented. Accordingly, sales to the nearest comparable level of trade in Brazil have been used for comparisons with sales to purchasers in the United States.

e. *Results of Fair Value Comparisons.* Using the above criteria, purchase price was found to be lower than the price for exportation to countries other than the United States. Comparisons were made on approximately 80 percent of the condenser paper sold for exportation to the United States during the period of investigation.

Margins were found ranging from 2 to 44 percent for these sales. The weighted-average margin over all sales compared was approximately 18 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this investigation.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

Robert H. Mundheim,

General Counsel of the Treasury.

May 29, 1979.

[FR Doc. 79-17258 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-22-M

Condenser Paper From France; Antidumping: Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that kraft condenser paper from France is being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. The case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: David P. Mueller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. (202)-566-5492).

SUPPLEMENTARY INFORMATION: On June 27, 1978, a petition in proper form was received pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of Crocker Technical Papers, Inc., Kimberly-Clark Corp., and the Stevens Paper Mill, Inc., domestic producers of the subject merchandise, alleging that condenser paper from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 *et seq.) (referred to in this notice as the "Act").* On the basis of this information and subsequent investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the **Federal Register** of August 8, 1978 (43 FR 35138). A

"Withholding of Appraisement Notice" was published in the Federal Register of February 20, 1979 (44 FR 10453).

In the Antidumping Proceeding Notice and the Withholding of Appraisement Notice condenser paper was described as capacitor tissue or condenser paper as provided for in item numbers 252.4000 and 256.3080 of the Tariff Schedules of the United State Annotated (TSUSA). It has been determined that the product coverage should be limited to kraft condenser paper. For purposes of this notice, "kraft condenser paper" means capacitor tissue or condenser paper containing 80 percent or more by weight chemical sulphate or soda wood pulp based on total fiber content as provided for in item numbers 252.4000 and 256.3080 of the TSUSA. These numbers are used for guidance purposes and not intended to limit the scope of the product coverage.

Bollore has requested that this determination not apply to imports of condenser paper to be used in electrolytic capacitors or condenser paper which is of higher than normal density (i.e., more than 1.0 grams per cubic centimeter). However, it has been determined that such types of condenser paper are of the same general class or kind of merchandise covered by this investigation. Any further limitation in the product coverage would create a highly artificial distinction. Accordingly, all condenser paper described above is subject to this determination of sales at less than fair value.

Determination of Sales at Less Than Fair Value

On the basis of the information developed in this investigation and for the reasons noted below, I hereby determine that kraft condenser paper from France is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which this Determination Is Based

a. *Scope of the Investigation.* Virtually all of the imports of the subject merchandise from France were exported to the United States by Papeteries Bollore S.A. (hereinafter referred to as Bollore). Therefore, the investigation was limited to this manufacturer.

b. *Basis of Comparison.* For the purpose of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between exporter's sales price and the price to third countries of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since all sales made to the United States by Bollore were to a wholly-owned subsidiary of the manufacturer. Third country price, as defined in § 153.3 of the Customs Regulations (19 CFR 153.3), was used for fair value comparison purposes as the best information available because the exporter did not furnish a timely submission of information concerning home market prices, as defined in § 153.2 of the Customs Regulations (19 CFR 153.2). Subsequent to the publication of the Withholding of Appraisement Notice, Bollore did make a submission concerning prices of similar condenser paper sold in France. However, there has been insufficient time to verify and analyze this information within the time limits established by law for the conclusion of this investigation. Such data may be considered in the assessment of actual dumping duties should that be appropriate following consideration of the case by the U.S. International Trade Commission.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States during the 6-month period February 1, 1978, through July 31, 1978.

c. *Exporter's Sales Price.* For the purposes of this determination, the exporter's sales price has been calculated on the basis of the prices to unrelated United States customers. Adjustments were made for United States duty, ocean freight, marine insurance, Customs clearance charges, United States inland freight, and expenses incurred in selling the merchandise in the United States.

Bollore sells condenser paper to customers in both cut and uncut form. However, comparisons were only made on the uncut paper because its sales accounted for virtually all of the company's sales during the period of investigation.

d. *Third Country Price.* For purposes of this determination, the prices of kraft condenser paper sold by Bollore to customers in Italy have been used as the basis for computing fair value. Information respecting the prices charged to Bollore's customers in Italy were in the petition filed on June 27, 1978. No adjustments were made to these prices.

Bollore claimed that prices in the home market should not be used as the basis of fair value because there are differences between the condenser paper sold in France and that sold in the United States. The differences relate principally to the respective densities of the paper involved. However, on the basis of information developed during the course of the investigation, it was determined that the merchandise sold in France and that sold in the United States are similar and permit comparison for purposes of the Act.

In lieu of furnishing the requested information concerning home market sales, Bollore originally provided data regarding sales of condenser paper to Mexico which was claimed to be identical in physical characteristics to that sold in the United States. However, section 205 of the Act (19 U.S.C. 164) directs that, in determining foreign market value, the price at which such or similar merchandise is sold in the principal markets of the country from which exported should be considered first. Only if no sales of such or similar merchandise are made in the home market, or the quantities of such sales are deemed to be insufficient, will foreign market value be based on export sales to third countries. Section 212(3) of the Act (19 U.S.C. 170(a)) defines "such or similar merchandise." Only if all of its criteria were not satisfied could it then be determined that the merchandise is "not so sold" in the home market. Because the merchandise sold in the home market meets the criteria of section 212(3)(B), home market data is preferred to third country data. Of course, adjustments for any differences in merchandise would be allowed if properly documented and verified.

Section 153.31(a) of the Customs Regulations (19 CFR 153.31(a)) states that if an adequate investigation is not permitted, or if any information deemed necessary is withheld, the Secretary will reach a determination on the basis of such information as is available to him. In this case, the information concerning home market sales of condenser paper in France was deemed to be necessary. Although the exporter belatedly submitted such data subsequent to the issuance of the Withholding of Appraisement Notice, there has been insufficient time to verify and analyze this information in time to be used for this determination. Therefore, information concerning sales of condenser paper to Italy, as furnished by the petitioner, has been used in reaching this final determination.

e. *Results of Fair Value Comparisons.* Using the above criteria, exporter's sales price was less than the third country price of such or similar merchandise. Comparisons were made on approximately 99 percent of the

condenser paper sold in the United States by Bollore during the period of investigation. Margins were found ranging from 48.7 percent to 163.8 percent, on 100 percent of sales compared. The weighted-average margin computed over all sales compared was 77.7 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The United States International Trade Commission is being advised of this determination. This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

Robert H. Mundheim,

General Counsel of the Treasury.

May 29, 1979.

[FR Doc. 79-17252 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Mead Reinsurance Corp.; Change of Name

The Mid-States Insurance Company, an Illinois corporation, has formally changed its name to Mead Reinsurance Corporation, effective November 13, 1978. The company was last listed as an acceptable surety on Federal bonds at 43 FR 28699, June 30, 1978.

A certificate of authority as an acceptable surety on Federal bonds, dated November 13, 1978, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Mead Reinsurance Corporation, Freeport, Illinois. This new certificate replaces the certificate of authority issued to the company under its former name, Mid-States Insurance Company. The underwriting limitation of $287,000 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: May 25, 1979.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 79-17176 Filed 6-1-79; 8:45 am]

BILLING CODE 4810-35-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 39043F]

Missouri Pacific Railroad Co.—Acquisition and Operation Over Louisiana & Pine Bluff Railway Co. Near Dollar Junction and Huttig in Union County, Ark.

Missouri Pacific Railroad Company (MP), 210 North 13th Street, St. Louis, MO 63103, represented by R. H. Stahlheber, General Attorney-Commerce, Missouri Pacific Railroad Company, 210 13th Street, St. Louis, MO 63103, hereby give notice that on the 7th day of May, 1979, it filed with the Interstate Commerce Commission at Washington, DC, and application under 49 U.S.C. 10901 (formerly Section 1(18) of the Interstate Commerce Act) for a decision approving and authorizing the acquisition and operation of the entire line of the Louisiana & Pine Bluff Railway Company (L&PB), which line, together with the Arkansas & Louisiana Missouri Railway Company's (A&LM) trackage rights thereover, is presently the subject of a joint abandonment application, AB-206 and AB-207, extending from milepost 523.01 at Dollar Junction, AR to milepost 526.51 at Huttig, AR, a distance of 1.83 miles in Union County, AR.

Applicant proposes to acquire and operate the line of railroad, which is the entire line of L&PB (though only 1.83 miles in length) and which is presently involved in the aforementioned joint abandonment application, AB-206 and AB-217. Applicant proposes to acquire concurrently with, or immediately following, abandonment.

L&PB and A&LM can no longer operate the subject line. It has served only a single industry, that industry being also served by MP. The line is significantly shorter than MP's existing line between the same termini. Thus, MP's acquisition, rehabilitation, and continued operation of the line is logical and clearly in the public interest. No opposition of any kind is expected.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451(1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publicatoin in a newspaper of general circulation. Any interested person is entitled to recommended to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H.G. Homme, Jr.,

Secretary.

[FR Doc. 79-17262 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-118 (Sub-No. 1)]

Proposed Policy Statement Concerning Jurisdiction Over Securities Issuances for Companies Obtaining Authority Under MC-118

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Policy Statement.

SUMMARY: The change in policy under the ruling in *Toto Purchasing & Supply Co., Inc.*, 128 M.C.C. 873 (1978) and the policy statement in Ex Parte No. Mc-118 has raised the question of whether the Commission will require an application under 49 U.S.C. section 11302 (formerly Section 214 of the Act) for all securities issuances and assumption of obligations by a company that has obtained a certificate or permit under this new policy. The Commission proposes to waive the filing of an application under section 11302, where the revenues from the for-hire operations are less than the amount for a Class I carrier at 49 CFR 1207 (presently $3 million gross annual revenues). Where the revenues from the for-hire operations are more than that of a Class I carrier, then the company will be required to apply for a waiver of the section 11302 application. Waiver will be granted if it is shown that the security issuance or debt incurred will

not have an impact on the for-hire operations.

DATE: Written comments should be filed with the Commission on or before July 5, 1979.

ADDRESS: Send comments to: Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg (202) 275-7245.

SUPPLEMENTARY INFORMATION: On November 20, 1978, the Commission issued Ex Parte MC-118, liberalizing the policy of granting motor carrier operating authority to an applicant who intends to use it primarily as an incident to the carriage of its own goods and non-transportation business. This decision became effective January 21, 1979, and adopted the change in policy announced in *Toto Purchasing & Supply Co., Inc.*, 128 M.C.C. 873 (1978) [see 43 FR 55051-55053]. This new policy creates a new class of regulated carriers: companies which hold I.C.C. authority, but in which transportation may earn only a fraction of the revenues. This mix of for-hire activities and non-transportation related activities has resulted in questions concerning the extent of I.C.C. regulation of newly licensed companies. In answering these questions, the Commission's goal is to retain useful regulations of these businesses, but to eliminate unnecessary regulation which would discourage companies from applying for I.C.C. authority and thus defeat the purpose of the *Toto* policy.

The Kimberly-Clark Corporation has filed a petition for declaratory order regarding the Commission's jurisdiction over securities issuances. 49 U.S.C. 11302 provides that "motor carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission" must file an application and obtain approval prior to the issuance of securities and the assumption of obligations and liabilities. It has traditionally been Commission policy that if a company holds a certificate or permit, even if transportation is only a small part of its business, it is a carrier and all securities issuances, even for non-transportation related activity, must be approved by the Commission. See *Consolidated Papers, Inc.—Notes*, unprinted decision, 1977 in F.D. 28601. Kimberly-Clark argues that the Commission's interest runs only to the transportation related activities of the company, and that, if the Commission must approve all securities, then companies will not apply for authority under *Toto*.

From a policy standpoint, the Commission has an interest in securities issuances only when the issuance will have an impact on the transportation industry. When the for-hire transportation portion of the business is not directly involved in the issuance, or when the issuance is not for a transportation-related activity, the Commission would generally have no interest in the security issuance. In these instances, the commission would be interested in the security issuance only if the for-hire operations of the business are so extensive that they have a major impact on the transportation industry.

It should be noted that *Toto* carriers differ from non-carrier holding companies, which may be considered carriers under 49 U.S.C. 11348 (formerly section 5(4) of the Act). The Commission subjects a non-carrier holding companies to securities regulation to insure that overcapitalization of such holding companies do not harm the carrier subsidiary. See *California Parlor Car Tours Co.—Greyhound* 127 M.C.C. 343 (1978). For a *Toto* carrier, since the non-carrier and carrier aspects are together in one business, there would be little economic incentive to manage one aspect of the business to the detriment of another aspect.

The Commission should be concerned with a security issuance of a *Toto* carrier only when it would have a substantial impact on the transportation industry. Where the revenues from the for-hire operations are less than the amount for a Class I carrier at 49 CFR 1207 (presently $3 million gross annual revenues), the operations will not have a substantial impact on the transportation industry. Accordingly, in these instances, we propose to grant an automatic waiver of the section 11302 application requirement. Where the revenues from the for-hire operations are more than that of a Class I carrier, the security issuance may have an impact on the transportation industry. Therefore, where the for-hire revenues exceed the amount for a class I carrier, we propose to have the company petition the Commission for a waiver of the section 11302 application requirement. To obtain a waiver, the company must show that the security issuance or assumption of obligations will not have an impact on the for-hire operations.

It may be argued that section 11302 is clear on its face and that the Commission has no authority to waive the required application. However, the Commission has an obligation to maintain useful regulation and it has the authority to interpret the Act broadly in order to accomplish this. This proposed notice would grant waiver of the filing of an application for a transaction which does not have a major impact on the transportation industry and in which the Commission has no substantial interest.

This proposed policy change is promulgated under the authority contained in 49 U.S.C. 10321 and 11302.

Dated: May 16, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian. Commissioner Stafford dissenting.

H. G. Homme, Jr.,

Secretary.

Commissioner Stafford (dissenting)

I am opposed to this policy statement for both legal and equitable considerations. Section 11302 requires that carriers providing transportation subject to the Commission's jurisdiction must file an application for approval prior to the issuance of securities or the assumption of obligations. The Commission has no authority to waive the required application. The majority, however, subverts the plain language of the statute by stating that we have an "obligation to maintain meaningful regulation," and a concurrent authority "to broadly interpret the Act." I am distressed by this approach. If the statute as written cannot be implemented, then it should be changed legislatively. Our "obligation to maintain meaningful regulation" does not give us the right to make this change on our own accord.

I am also opposed to this policy because it will grant yet another advantage to the private/for-hire carrier. I can understand why the Commission is reluctant to assume the task of monitoring the business judgments of the numerous private carriers who may want to be licensed by the ICC. On the other hand, we have no right to carve out a special class of carriers subject to a less stringent standard of regulation. Not only does this violate the Interstate Commerce Act, it also ignores the constitutional standards of fundamental fairness and equal protection. The advantage given today to the *Toto* carrier becomes even more significant when it is remembered that these carriers will likewise enjoy the benefit of a cross subsidy. There are certain cost items which by nature will be shared by both the private and for-hire segments of a business entity and this sharing will itself provide a cost advantage to the private/for-hire carrier.

Even if we had the statutory authority to adopt this policy, there is no data to support the sweeping conclusion contained in today's paper. What is the justification for deciding that a *Toto* carrier whose for-hire operations gross 2.9 million dollars in annual revenue will not have a substantial impact on the transportation industry? Clearly, we have no support for this statement. At the very least, we should have reserved judgment until after reviewing public comment in response to the petition for declaratory order. For all of these reasons, I respectfully dissent from the proposed policy statement.

[FR Doc. 79-17331 Filed 6-1-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 108
Monday, June 4, 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
Civil Aeronautics Board	1, 2
Commodity Futures Trading Commission	3, 4
Federal Deposit Insurance Corporation	5, 6
Federal Election Commission	7
Federal Energy Regulatory Commission	8, 9
Federal Home Loan Bank Board	10
Federal Mine Safety and Health Review Commission	11
National Transportation Safety Board	12
Parole Commission	13

1

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the May 31, 1979, meeting agenda (M-223 Amdt. 2; 5/30/79).

TIME AND DATE: 10 a.m., May 31, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 19a. Docket 35346, Application of Braniff Airways, Inc., for an emergency exemption to serve Los Angles-Honolulu. (Memo 8867, BDA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: This item is of importance to the traveling public affected by the recent United strike and it is essential that the Board take action on it prior to the May 31, 1979 meeting. Accordingly, the following Members have voted that agency business requires the addition of Item 19a to the May 31, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1110-79 Filed 5-31-79; 3:40 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

Notice of deletion of items from the May 31, 1979 meeting agenda (M-223 Amdt. 3; 5/30/79).

TIME AND DATE: 10 a.m., May 31, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

17. Dockets 31290 and 21866-4, Notice of Proposed Rulemaking proposing to eliminate the mandatory joint fare program established in Phase 4 of the *DPFI*. (Memo 8858, BDA, OGC)

18. Docket 34138, In the Matter of Commuter/Certificated Joint Fares. (Memo 8311-F, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Items 17 and 18 are being deleted from the May 31, 1979 agenda in order for the staff to do additional work. Accordingly, the following Members have voted that agency business requires the deletions of Items 17 and 18 from the May 31, 1979 agenda and that no earlier announcement of these deletions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1111-79 Filed 5-31-79; 3:40 p.m.]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., June 6, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Research Program: Priorities and Projects.
Status Report on Exchange Minimum Financial and Disciplinary Rules.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1103-79 Filed 5-31-79; 1:26 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., June 6, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters/civil actions; settlement offers.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1104-79 Filed 5-31-79; 1:26 pm]

BILLING CODE 6351-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Date and Times of Agency Meetings.

Pursuant to subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the meetings of the Corporation's Board of Directors originally scheduled for 2:00 p.m. (Open) and 2:30 p.m. (Closed) on Tuesday, May 29, 1979, have been rescheduled for 10:00 a.m. (Open) and 10:30 a.m. (Closed) on Wednesday, May 30, 1979.

Dated: May 25, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1099-79 Filed 5-31-79; 9:17 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Wednesday, May 30, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of memorandums and resolutions proposing the final adoption of amendments to, and an interpretation of,

Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits."

The board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 30, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1100-79 Filed 5-31-79; 9:17 am]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, June 7, 1979 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory opinion 1979-16—Charles W. Schoeneman, Counsel, National Association of Women's and Children's Apparel Salesmen (NAWCAS) and National Association of Men's and Boy's Apparel Clubs (NAMBAC) Trusts.
Advisory opinion 1979-23—J. Kent Jarrell, Counsel to Neil Wallace for Congress Committee.
Final audit report of the AFL-CIO, COPE, PCC.
Final audit report on a tirbute to Gerald R. Ford.
Final audit report on the Business-Industry Political Action Committee.
Threshold certification procedures.
1980 elections and related matters.
Financial control and compliance manual for Presidential candidates.
Pending Legislation.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public: Any matters not concluded on June 5, 1979.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone: 202-523-4065.

Lena L. Stafford,

Acting Secretary to the Commission.

[S-1106-79 Filed 5-31-79; 8:45 am]

BILLING CODE 6715-01-M

8

May 30, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., June 6, 1979.

PLACE: 825 North Capitol Street NE., Washington, D.C., Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—295th Meeting—June 6, 1979, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER79-73, Washington Water Power Co., et al.
CAP-2. Docket No. ER79-236, Public Service Co. of Indiana, et al.
CAP-3. Docket No. ER79-307, Boston Edison Co.
CAP-4. Docket No. ER79-309, Otter Tail Power Co.
CAP-5. Docket Nos. ER79-314 and ER79-317, Public Service Co. of Indiana.

Gas Agenda—295th Meeting—June 6, 1979, Regular Meeting

CAG-1. Docket Nos. RP78-10 and RP72-32 (PGA77-2a), Kansas-Nebraska Natural Gas Co., Inc.
CAG-2. Docket No. RP73-14 (PGA No. 79-1) (DCA No. 79-2) (AP No 79-2), Michigan Wisconsin Pipeline Co.
CAG-3. Docket No. CI78-871, American Natural Gas Production Co.; Docket No. CS79-78, Golden Trend Oil and Gas Corp.; Docket No. CS79-88, Jane Gregory Marechal, Docket No. CS79-90, Jane Gregory Marechal and George Stuart Heyer, Trustees; Docket No. CS 79-97, Dave R. Sylvan; Docket No. CS79-108, William E., Bancroft; Docket No. CI78-822, The Superior Oil Co.; Docket No. CI78-820, Terra Resources, Inc.; Docket No. CI77-765, Union Texas Petroleum; Docket No. CI78-909, Union Texas Petroleum; Docket No. CS71-579, Harry Spooner, Jr. and Spooner Petroleum Co.; Docket No. CS76-142, John H. McCarter, Jr., individual and d.b.a. D. J. Simmons Co. of Louisiana and/or Farrell and Co. of Louisiana; Docket No. CS73-421, Petrofunds, Inc.; Docket No. CS78-687, McRae Exploration, Inc.; Docket No. CS78-688, Petrofunds, Inc.; Docket No. CS79-20, Sagadahoc Oil and Gas Corp.; Docket No. CS79-21, Dee Jay Co.; Docket No. CS79-24, James M. Watson; Docket No. CS79-53, Clover Energy Corp.; Docket No. CS79-64, Lawbar Petroleum, Inc.; Docket No. CS75-287, et al., The Polumbus Corp., et al., Docket No. CS77-299, Enerco Exploration and Management Co.; Docket No. CI78-1188, Mobil Oil Corp.
CAG-4. Docket Nos. CI78-583, et al., Prosper Energy Corp.
CAG-5. Docket Nos. CI76-759, et al., Getty Oil Co., et al.
CAG-6. Docket Nos. CI78-510, et al., Florida Gas Exploration Co., et al.
CAG-7. Docket Nos. CI77-781, et al., Continental Oil Co., et al.
CAG-8. Docket Nos CI78-523, et al., Texaco, Inc.
CAG-9. Docket Nos. CI78-1194 and CI78-1254, Mobil Oil Corp.
CAG-10. Northern Natural Gas Co.
CAG-11. Docket No. CP78-312, Transcontinental Gas Pipe Line Corp.
CAG-12. Docket No. CP77-645, Consolidated Gas Supply Corp., Texas Eastern Transmission Corp. and Equitable Gas Co.
CAG-13. Docket No. TC79-99, Columbia Gas Transmission Corp.
CAG-14. Docket No. CP79-102, Southern California LNG Terminal.
CAG-15. Docket No. CP79-45, Natural Gas Pipeline Co. of America.
CAG-16. Docket No. CP78-341, Michigan-Wisconsin Pipe Line Co.
CAG-17. Docket No. CP78-262, Sea Robin Pipeline Co., United Gas Pipe Line Co., Southern Natural Gas Co. and Natural Gas Pipeline Co. of America.
CAG-18. Docket No. CP79-191, Transcontinental Gas Pipe Line Corp.
CAG-19. Docket No. CP79-187, United Gas Pipe Line Co.
CAG-20. Docket No. CP72-182, Transcontinental Gas Pipe Line Corp. and Texas Gas Transmission Corp.
CAG-21. Docket No. CP78-486, Transcontinental Gas Pipe Line Corp. and Northern Natural Gas Co.
CAG-22. Docket No. CP79-177, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

I. Licensed Project Matters

P-1. Project No. 2778, Idaho Power Co.
P-2. Project No. 2777, Idaho Power Co.

II. Electric Rate Matters

ER-1. Docket No. ER79-183, Iowa Electric Light and Power Co.
ER-2. Docket No. ER78-194, The Cleveland Electric Illuminating Co.
ER-3. Docket No. E-7796 and E-7777 (phase II), Pacific Gas and Electric Co.

Miscellaneous Agenda—295th Meeting—June 6, 1979, Regular Meeting

M-1. Notice of Well Category Determination (JV79-3995).
M-2. Notice of Well Category Determination by State of Ohio, Department of Natural Resources, Division of Oil and Gas (JD79-3746).
M-3. Utah Department of Natural Resources Division of Oil, Gas, and Mining (JD79-3063).
M-4. Docket No. GP79- , Texas Oil and Gas Corp.
M-5. Docket No. RM79- , Delegation of the Commission's Authority of Various Staff Office Directors.

Gas Agenda—295th Meeting—June 6, 1979, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket No. RP75-14, Transwestern Pipe Line Co.

RP–2. Docket No. RP72–133 (PGA77–2), United Gas Pipe Line Co.
RP–3. Docket Nos. RP72–154 (PGA78–1), RP76–115 (AP78–1) and RP72–74 (DCA78–1), Northwest Pipeline Corp.

II. Producer Certificate Matters

CI–1. Docket No. CI78–742; Exxon Corp; Docket No. CI78–1155, Issac Arnold, Jr., et al.

III. Pipeline Certificate Matters

CP–1. Docket No. CP78–376, Town of Metcalfe, Miss.
CP–2. Docket Nos. CP77–421, CP79–15, CP79–44, CP79–49, CP79–51, CP79–69, Transcontinental Gas Pipe Line Co.; Docket Nos. CP77–324, CP77–548, CP78–117, CP79–73, Texas Eastern Transmission Co.; Docket Nos. CP77–321, CP78–241, CP79–73, Southern Natural Gas Co.; Docket No. CP77–566, Transcontinental Gas Pipe Line Co. and Michigan Wisconsin Pipe Line Co.; Docket Nos. CP77–592 and CP77–639, Trunkline Gas Co.; Docket No. CP78–246, Texas Gas Transmission Co.; Docket No. CP78–68, Florida Gas Transmission Co.
CP–3. Docket No. CP78–186, Natural Gas Pipe Line Co. of America and Southwestern Gas Pipe Line, Inc.
CP–4. Docket Nos. CP75–140, et al., Pacific Alaska LNG Co., et al.; Docket Nos. CP74–160, et al., Pacific Indonesia LNG Co., et al.; Docket No. CI78–453, Pacific Lighting Gas Development Co.; Docket No. CI78–452, Pacific Simpco Partnership.
CP–5. Docket Nos. CP75–140, et al., Pacific Alaska LNG Co., et al.; Docket Nos. CP74–160, et al., Pacific Indonesia Co., et al.; Docket Nos. CP75–83–1, 2 & 3, et al., Western LNG Terminal LNG Associates; Docket No. CP79–102, Southern California LNG Terminal Co.
CP–6. Docket No. RP72–89 and TC79–127, Columbia Gas Transmission Corp.; Docket No. RP72–6 (Ignition and Flame Stabilization), El Paso Natural Gas Co.; Docket No. RP73–6, Mississippi River Transmission Corp.; Docket No. RP76–91, and CP76–167, Montana Dakota Utilities Co.; Docket No. RP75–62, Cities Service Gas Co.; Docket No. RP72–6, El Paso Natural Gas Co.; Docket No. RP76–90, Kansas-Nebraska Natural Gas Co.; Docket No. RP75–79, Lehigh Portland Cement Co. v. Florida Gas Transmission Co.; Docket No. RP76–52, et al., Northern Natural Gas Co.

Kenneth F. Plumb,

Secretary.

[S–1101–79; Filed 5–31–79; 10:33 am]

BILLING CODE 6740–02–M

9

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., June 1, 1979.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20526, Hearing Room P.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Continuation of May 10, 1979, meeting on a matter related to civil litigation.

(2) A matter related to the conduct of an investigation and an on-the-record proceeding.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275–4166.

[S–1107–79 Filed 5–31–79; 3:08 pm]

BILLING CODE 6740–02–M

10

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 5:30 p.m., May 30, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin D. Bolling (202–377–6677).

MATTERS TO BE CONSIDERED: Consideration of Regulations Regarding Revised Rates on Savings Accounts.

No. 244, May 31, 1979.

Announcement is being made at the earliest practicable time.

[S–1102–79 Filed 5–31–79; 12:54 pm]

BILLING CODE 6720–01–M

11

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., May 30, 1979.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following.

5. *Secretary of Labor* v. *Morton Salt Company*, DENV 79–161–PM. (Petition for Discretionary Review)

It was determined by unanimous vote of the Commissioners that Commission business required that this item be added to the May 30, 1979, agenda and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Joanne Kelley, 202–653–5632.

[S–1109–79 Filed 5–31–79; 3:36 p.m.]

BILLING CODE 6820–01–M

12

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S–1093–79, to be published June 1, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, May 31, 1979 [NM–79–16].

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires the holding of a session at 2 p.m. on May 31, 1979, to discuss the item listed below and that no earlier announcement was possible.

STATUS: Open.

MATTER TO BE CONSIDERED: *Discussion* of the telegraphic Airworthiness Directive issued by the Federal Aviation Administration on May 30, 1979, relative to the DC–10 aircraft.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

May 31, 1979.

[S–1106–79 Filed 5–31–79; 2:45 pm]

BILLING CODE 4910–58–M

13

UNITED STATES PAROLE COMMISSION: (National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).)

TIME AND DATE: Tuesday, June 12, 1979, at 9:30 a.m.

PLACE: Room 828, 320 First Street, N.W., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 12 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson, Analyst (202) 724–3094.

[S–1105–79 Filed 5–31–79; 2:44 pm]

BILLING CODE 4410–01–M

federal register

Monday
June 4, 1979

Part II

Department of Health, Education, and Welfare

Health Care Financing Administration

PSRO Hospital Review

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

42 CFR Part 466

PSRO Hospital Review; Relationship of PSRO to Hospitals and Use of Hospital Review Committees; Norms for PSRO Hospital Review

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rule.

SUMMARY: This regulation establishes procedures for: (1) Professional Standards Review Organization (PSRO) review of hospital services for which payment may be made under the Social Security Act; (2) PSRO delegation of review functions to hospitals; and (3) development and use of norms, criteria, and standards for PSRO screening of health services. Section 1155 of the Social Security Act authorizes hospital review as one of the PSRO duties and functions. Section 1155(e) requires PSRO's to use the findings of capable hospital review committees, and Section 1156 authorizes the Department to issue regulations on the nature and development of norms to be applied in reviews.

The purpose of the reviews is to determine if the hospital services are medically necessary, appropriately provided at a hospital level of care, and are in accordance with professionally recognized standards of quality.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: Geraldine L. Ellis, Director, Division of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, HEW, Dogwood East Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–1432.

SUPPLEMENTARY INFORMATION: On January 25, 1977, three Notices of Proposed Rulemaking were published in the **Federal Register** (42 FR 4624; 4632; and 4637). They proposed to add three subparts to 42 CFR Part 101:

Subpart G—Hospital Review.

Subpart H—The Relationship of the PSRO to Hospitals and Utilization of Hospital Review Committees.

Subpart I—Norms for PSRO Hospital Review.

A regulation effective October 1, 1977, established a new Chapter IV in Title 42 of the CFR and transferred all Health Care Financing Administration regulations to that new chapter. Accordingly, this final regulation is codified under Subchapter D, Professional Standards Review, of 42 CFR Chapter IV as Part 466, Subparts A through D.

I. Background

Establishment of Professional Standards Review Organizations (PSRO's) was mandated by Congress in the 1972 Amendments to the Social Security Act (Pub. L. 92–603). The purpose of the PSRO program is to assure that health care services and items for which payment may be made in whole or part under Titles V, XVIII, and XIX of the Social Security Act are medically necessary, conform to appropriate professional standards and are delivered in the most effective, efficient, and economical manner possible.

The PSRO program is based on two fundamental concepts of health care review: that physicians are the most appropriate individuals to assess the quality of medical care, and that local peer review is the most effective means for ensuring that health care resources and facilities are appropriately utilized. Using these concepts as a foundation, health professionals are responsible for fulfillment of the following major goals of the PSRO program:

- Assuring that health care services are medically necessary and are of acceptable professional quality;
- Assuring appropriate utilization of health care facilities at the most economical level consistent with professional standards;
- Identifying quality and utilization problems in health care practices and working toward their improvement; and
- Attempting to obtain voluntary correction of inappropriate or unnecessary practitioner and facility practices and, where unable to do so, recommending sanctions against such practitioners and facilities.

The duties and functions of the PSROs include the review of health care services provided in hospitals which may be paid for under Medicare, Medicaid, or other programs established by the Social Security Act. This review determines the medical necessity of the services, if they meet professionally recognized standards of care, and whether inpatient care is necessary. This regulation provides procedures for these review systems in hospitals.

Hospital review is divided into: (1) Review of services provided to individual patients, and (2) review of quality and patterns of delivery of health care services. Review of patient services includes admission and continued stay reviews. Admission reviews determine the appropriateness of the proposed health services and the appropriateness of providing them in a hospital setting. Continued stay review determines the necessity for hospital care, rather than a lesser level of institutional care or outpatient care, for individual patients. Health care service delivery review includes medical care evaluation (MCE) studies and profile analyses. MCE studies are indepth reviews of health care delivery and medical management practices. Profile analyses are reviews of patient care data related to institutions and practitioners.

II. The Review System

The regulation sets forth three major review components:

A. Concurrent review of the medical necessity and appropriateness of admission to, and continued stay in, a hospital (admission review and continued stay review);

B. Medical care evaluation (MCE) studies to assure the quality and improve the nature of the utilization of health care services; and

C. Analysis of health care practitioner, institutional, and patient profiles.

These components of the PSRO hospital review system interact to form a comprehensive quality assurance mechanism.

The accumulation of data through concurrent review, MCE studies, and profile analysis enables PSROs to identify areas of practice (e.g., diagnoses, conditions, therapies, and procedures) which demonstrate consistently good performance. On the basis of adequate data, PSROs will focus concurrent review activities to concentrate on problem areas. Though focusing, PSROs will be able to devote their review resources to priority areas while simultaneously monitoring the effectiveness of the entire system. Focusing of concurrent review, together with monitoring of other areas, is likely to be the key to PSRO efficiency and effectiveness.

Alternate Approaches to Concurrent Review

The regulation authorizes PSROs to submit review plans which propose innovative approaches to meet the objectives of concurrent review. Such proposals will be accepted by HCFA, if they are consistent with the provisions of Title XI, Part B of the Act, and if they have been shown to be or have the potential to be equally or more efficient and effective than the concurrent review

procedures described in this regulation. If HCFA approves alternative methods of review, the PSRO directly, or a hospital performing review for the PSRO, may utilize such procedures in lieu of concurrent review.

The review requirements specified in this regulation are based on experience gained by PSROs. In recent years, PSROs have progressed from concern about development and implementation of review to concern about review performance and cost effectiveness. In the process, hospital review is becoming more problem oriented. Consequently, the final regulation includes a reference to the objective setting requirements of the program. These requirements are established in 42 CFR 462.6(b)(6), (Grant) Application requirements for conditional designation, and PSRO Transmittal No. 83, Information to Assist in Objective Setting, October 19, 1978. Furthermore, PSROs are expected to accomplish review objectives within an annually negotiated budget. A regulation implementing this process is under development. Provisions to accommodate problem-oriented, targeted review are included in the sections of this regulation dealing with modifications of review activities and alternative review methods.

Delegation of Review Responsibility to Hospitals

The regulation provides that the PSRO will use the hospital's review committee(s) and review staff in the performance of PSRO concurrent review or MCE studies, or both, where such insititutions are willing and have the capability to effectively perform these functions. This PSRO use of the hospital review is called delegation. Where the PSRO delegates the performance of either of these review functions to a hospital, the PSRO still retains responsibility to monitor and assure effective performance. The PSRO is expected to exercise this delegation authority and monitoring activity carefully.

Use of Norms, Standards and Criteria in Concurrent Review

The regulation provides that area length-of-stay norms will be used to assist the PSRO in developing length-of-stay projections which are used to assist in setting the times when PSRO reviews must be completed. Also, the regulation provides that criteria will be used in concurrent review for screening in order to select from a large number of cases those which require peer review. For example, if a PSRO review coordinator finds that a patient's physical symptoms or diagnostic test results are not consistent with the criteria developed by the PSRO for a certain diagnosis, the coordinator would refer the case to a PSRO physician advisor for peer review. When an admission is certified, the coordinator would then set a length-of-stay period by the end of which continued stay review must be completed.

Regional norms, criteria, and standards will be distributed by the National Professional Standards Review Council and will be used as principal points of reference by each PSRO as it establishes norms, criteria, and standards for its area. Until such time as the National Council distributes such regional norms, criteria, and standards, PSROs will be expected to utilize available, statistically valid regional data to develop length-of-stay projections, and available sets of criteria and standards as guides to developing PSRO area criteria and standards. In addition to its responsibility to distribute regional norms, criteria, and standards, the National Council will be analyzing the appropriateness of variations among the norms, length-of-stay projections, criteria, and standards employed by PSROs.

III. Changes in Regulation due to Legislation

As a result of the enactment of Pub. L. 95–142, the "Medicare-Medicaid Anti-Fraud and Abuse Amendments" (October 25, 1977), the following changes are made:

A. The definition of physician was expanded to include medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. This change allows these medical officers to be members of PSROs. However, they are not eligible for membership on the National Professional Standards Review Council and may not make final determination with respect to the professional conduct of, or any act performed by, a licensed doctor of medicine or osteopathy.

B. The conditions under which PSRO reviewers would be disqualified were narrowed. Under the final regulations, only those who were *directly* responsible for care being reviewed, or have a *significant* financial interest (defined as 5 percent or more) in the institution would be disqualified as reviewers.

IV. Response to Comments

Eighty-three written comments were received from PSROs, professional organizations, hospitals, hospital associations, government agencies, organizations, and individuals. Most comments concerned the basic process of the PSRO review system or the specific procedures to be used. Several questions were raised regarding the respective roles of physicians and health care practitioners other than physicians in PSRO activity. Some comments addressed certain aspects of PSROs' relationships with other government agencies, hospitals, health care providers, and consumers. All of the comments were considered in drafting the final regulations.

A. Modification of Review Activities

The regulation allows modifying review to concentrate on known or suspected problem areas and away from those areas of hospital health care in which utilization of services has been consistently appropriate.

Comments were generally in favor of this type of review modification, and many requested that guidelines be included in this section for PSROs to use in focusing review. Specific suggestions were made that HCFA should (1) require certain types of data and approve modified review activities and (2) indicate criteria for determining if a PSRO is ready to focus review before focusing could take place.

(1) We decided not to require prior HCFA approval of modified review activities in order to allow PSROs the opportunity to build flexible and innovative review systems.

(2) We agree that criteria regarding what constitutes a PSRO's readiness to implement modified review methods would be helpful. However, we believe that local utilization data are the best criteria now available and that the state of the art of peer review is still evolving and requirements should not be mandated at this time.

B. Participation of Health Care Practitioners other than Physicians in PSRO

Section 1155(b)(1) of the Act states (and the regulation paraphrases): "To the extent necessary or appropriate for the proper performance of its duties and functions, the Professional Standards Review Organization serving any area is authorized in accordance with regulations prescribed by the Secretary to (1) make arrangements to utilize the services of persons who are practitioners of or specialists in the various areas of medicine (including dentistry), or other types of health care * * *". The Senate Finance Committee Report accompanying the original PSRO legislation clearly indicates that

Congress intended the PSRO program to be based on the principle of peer review (S. Rpt. No. 92–1230, 92d. Cong., 2nd Sec., (1972), pp. 256, 265). Therefore, we did not accept the suggestions from the groups wanting little or no participation of health care practitioners other than physicians. However, we did make, the following changes based on comments received:

(1) The term "health care practitioner other than physician" replaces "nonphysician health care practitioner" since many professional groups felt that this was a more appropriate term than "nonphysician".

(2) The peer review responsibilities of health care practitioners other than physicians involved in ordering health care have been clarified. When health care practitioners other than physicians are directly involved in ordering health care, they should be involved in making PSRO review decisions. When the quality of the care delivered by their peers is being reviewed, if practical, health care practitioners other than physicians must evaluate and make final decisions about this care. In concurrent review, a distinction has been made in the regulation between those practitioners other than physicians who have independent hospital admitting privileges and those who do not. Only those with admitting privileges should make final PSRO decisions. For example, when a dentist admits patients to and discharges them from a hospital on his own initiative independent of a physician, he generally serves as the "physician of record." In those instances, dental peers should make adverse determinations unless it is impractical due to the absence of additional peer practitioners in the PSRO area, such as in small hospitals or rural areas which have limited numbers of personnel in certain professions.

We encourage PSROs to make every effort to obtain a peer to review a peer's work by keeping a roster of peer practitioners who could serve as consultants should the need arise. Specifically, in those instances where health care practitioners other than physicians require physician concurrence for hospital admission, we encourage PSROs to consult with peer practitioners regarding adverse determinations even though physicians make the decisions.

The methods for involving health care practitioners other than physicians in review functions must be included in a PSRO's agreement with a delegated hospital (§ 466.35). This requirement will help assure adequate participation by these practitioners in delegated hospitals.

The definition of "active staff privileges in a hospital" in respect to health care practitioners other than physicians was clarified by specifying that only those health care practitioners other than physicians who independently admit patients to a hospital are considered to have active staff privileges.

C. Medical Care Evaluation (MCE) Studies

The proposed rule outlined the nature and purpose of MCE studies, the required number to be completed per year, and the pertinent reporting requirements. Comments addressed almost all aspects of the proposal and expressed views on various sides of the issues. Following are the issues raised, and HCFA decisions:

(1) One commenter disagreed with requiring PSROs to perform the studies, another commented that MCE studies should be emphasized.

Section 1155(a) requires the PSRO to review services to determine whether the quality of those services meets professionally recognized standards of care. HCFA has determined that the MCE studies component of the review system is a cost-effective way to carry out assessment of practice in hospitals and of practitioners. Therefore, the requirement for MCE studies is retained.

(2) Several commenters suggested that the required number of MCE studies (ranging from 4 to 12 per year based on number of admissions in the hospital) be reduced or that a reaudit be counted as a separate study. One comment was received in support of the required numbers.

There is great potential for a large number of MCE studies, because study topics can be selected from any medical diagnosis, any diagnostic or therapeutic procedure, or any identified potential problem in the delivery of a health care service. The numbers chosen are thought to be necessary to perform indepth review of institutions of various sizes and were developed in collaboration with JCAH. The requirements will, however, be periodically reviewed to determine their reasonableness and, if changes are warranted, the regulation will be modified.

(3) One commenter suggested that alternative methods for MCE studies should be provided.

We agree that the PSROs should have this option in order to promote new methods and ideas in the field. Thus, HCFA will approve alternative methods of performing quality review (see § 466.22) if they can be shown to be, or have the potential to be, at least as effective as the suggested methods in carrying out PSRO duties and functions. In general, HCFA will accept a hospital plan which is acceptable to JCAH.

(4) The regulation provides for similar requirements for numbers of indepth quality of care studies as are required by the JCAH. One comment stated that attempting to coordinate PSRO and JCAH requirements for MCE studies could lead to difficulties for delegated hospitals in complying with both PSRO and JCAH requirements.

The PSRO policy was adopted after consultation with the JCAH since their requirements affect most of the nation's hospitals, and HCFA believes the requirements should be as uniform as possible. Additionally, we intend to work closely with JCAH in all aspects of quality review. The requirements for the number of MCE studies as well as all other PSRO/hospital/JCAH issues will continue to be examined as the program progresses. Based on our experience to date, the difficulties proposed by the commenter have not occurred.

(5) Commenters pointed out that several characteristics of MCE studies listed in a HCFA policy issuance (PSRO Transmittal No. 43, January 25, 1977) were omitted from regulations.

The omission of certain MCE study characteristics was inadvertent and has been corrected in the final regulation.

These characteristics involve peer analysis of discrepancies, documentation regarding implementation of recommended actions, and the periodic reporting of quality assurance activities to the hospital board.

(6) Many comments suggested that we require MCE studies addressing the care given by health care practitioners other than physicians. One commenter recommended that specific topics for MCE studies, such as rates of mortality, infection, or complication, be required in the regulation.

The regulation provides that MCE study topics will be at the discretion of the PSRO, but will be based on known or suspected problem areas. It would not be possible for HCFA to specify studies of particular specialists or health topics, based on known or suspected problems, that would be common to all PSRO areas.

(7) One commenter suggested that requiring the PSRO to report MCE study results to the hospital's administration might place the PSRO in a position of causing division between the hospital staff and management.

This section is intended to keep administrators informed of any identified problems in their respective hospitals so that administrators, as well as medical staff, could take necessary action. For this reason, we have retained it. We believe that this will help coordinate action between the hospital medical staff and management rather than promote division.

(8) One commenter disagreed with the inclusion in PSRO MCE studies of patients whose care is not paid for under Medicare or Medicaid and objected to making the hospital responsible for authorizing this inclusion.

HCFA has worked closely with the JCAH to assure uniform requirements for hospitals and equal quality of treatment for all patients regardless of whether their care is privately or Federally funded. Hence, the regulation continues to require PSROs to examine both private and Federally funded patient records when they can access both types of records. However, this regulation does not require hospitals to disclose private patient records for purposes of PSRO MCE studies. Therefore, it is the hospital and not the PSRO that may authorize access to records of these patients within the limits of the hospital's rules and legal authorities which govern such disclosures.

(9) One commenter suggested requiring areawide MCE studies. While there is some preliminary evidence that areawide MCE studies allow for a wider comparison of practice patterns, the state of the art in areawide auditing is not fully developed and making areawide MCE studies a requirement is premature. However, the regulation does not discourage areawide MCE studies. The regulation provides that an MCE study done on an areawide basis will be credited toward each hospital participating in the MCE study.

D. Profile Analysis

The proposed regulation included a description of various types of profiles and the purpose and process of profile analysis.

(1) One commenter suggested that comparing a practitioner's care in one hospital in an area with his care in another hospital in the area would generate useful data. We have added a provision for comparison of practitioners' care across the entire PSRO area.

(2) One commenter suggested that the regulation is too specific and would not permit new methods of hospital review. However, we believe that the rules permit sufficient local flexibility and, thus, it is unnecessary to include a new section on alternative review methods for profile analysis.

E. PSRO Relationship to Medicaid and Medicare

Under Sections 1152(e), 1155(a)(1), and 1158(c) of the Social Security Act, the responsibility for review of health care services and items paid for under the Social Security Act is shifted from hospitals and third party payors to PSROs. This regulation provides that, to the extent authority for making determinations of medical necessity is vested in the PSRO, it will not be exercised by intermediaries, carriers, State agencies or other fiscal agents. In general, it is the PSRO's responsibility to make determinations of medical necessity and the fiscal agent's responsibility to apply payment guidelines. In addition, sections 1152(h), 1154(e), 1171 of the Act provide for State agency review of PSRO activities at discrete points during the development and implementation of the PSRO's review. Specific requirements regarding this review are included in the final PSRO "Assumption of Review Responsibility" regulations, published in the **Federal Register** on February 22, 1978 (43 FR 7400). As provided in the "Assumption of Review Responsibility" regulations, the State has the opportunity to review and comment on a PSRO's annual review plan, monitor PSRO review determinations and their effects on State expenditures, and appeal to HCFA for modifications of PSRO review or removal of a PSRO's authority to make binding determinations in particular circumstances (42 CFR 463.5).

Also, Section 1165 of the Social Security Act authorizes HCFA to prescribe methods to coordinate Medicare, Medicaid, and PSRO functions. In order to assure coordination of these functions, various sections of the regulation provides for PSRO/Medicaid cooperation and data exchange.

(1) Commenters suggested that Medicaid level of care provisions be used in PSRO determinations.

This was an omission and has been included in the final regulation. It was also noted that Medicare regulations have an added section covering posthospital extended care. Accordingly, we have included § 405.128a in the list of reference citations for PSROs to use in making level-of-care determinations.

(2) Commenters suggested that PSRO's be required to obtain approval from their State Medicaid agencies before instituting length-of-stay projections and norms and plans for modification of review or alternative review activities.

The statute mandates National Professional Standards Review Council, not State approval of PSRO norms which deviate significantly from those distributed by the Council. In regards to alternative plans for review activities or modification of review we encourage coordination of activity and sharing of data, within the limits of confidentiality. We also encourage prior consultation with the State agency regarding the PSRO's plans to modify review methods and norms and anticipate that the PSRO would keep the State agency informed of any significant modifications implemented. Should the State have unresolved concerns about these modifications, they may be addressed informally to HCFA and will be considered during the HCFA or Council review. (Formal procedures for dealing with State-PSRO disagreements which may include disputes over norms or alternative review methods, are set forth in the "Assumption of Review Responsibility" regulations (43 FR Part 7400).)

(3) Several commenters advocated stating in the regulation that, until the PSROs develop methods of ancillary services review, this review will be continued by the Medicaid State agencies and Medicare fiscal intermediaries.

HCFA does not agree that a provision for ancillary services review by State agencies or fiscal intermediaries is an appropriate inclusion in these regulations, because PSROs have the responsibility under section 1154(b) of the Act for conducting ancillary services review in hospitals.

(4) Comments requesting a method for initiating changes in services covered by Medicare and Medicaid are not reflected in this regulation because changes in coverage can only be made in appropriate Medicare and Medicaid regulations, and not through these regulations.

(5) Comments suggesting that PSRO entry in a hospital be made a condition of participation in the Medicaid program were not accepted. A hospital that refuses entry may be sanctioned under Section 1160 of the Act, leading to termination of the provider agreement, so further regulations are not required (proposed rule 43 FR 47474).

(6) Comments recommending the inclusion of the Medicaid agency in a PSRO decision to sanction were not accepted. However, we encourage

PSROs to involve the State agency in its attempts to secure the cooperation of the hospital before a sanction against a hospital is recommended.

F. Review of Elective Surgical and Major Diagnostic and Therapeutic Procedures

This regulation requires a system of concurrent PSRO review of admissions. In the case of elective surgical or major diagnostic or therapeutic procedure (hereafter called procedures), the regulation provides for review of the medical necessity of these procedures within three working days of a patient's hospital admission. However, because admissions review may take up to three working days, this medical necessity review sometimes takes place after a procedure is performed. If the PSRO has developed documentation or has a reasonable belief that a procedure is being utilized inappropriately, the regulation requires that medical necessity review take place prior to the performance of the procedure. As with other types of concurrent review, this review is to be performed as soon as feasible and in most cases is to be completed before the three working day limit and prior to the procedure.

(1) Comments suggested that any preprocedure review would be detrimental to patient care because it could lead to delay in a patient's receiving necessary treatment. However, the definition of elective procedures is those which can be delayed without risk to the patient. If a PSRO anticipates that preprocedure review after hospital admission would delay the initiation of care required by the procedure, the review should be performed before the admission to avoid increasing the length of stay.

(2) A commenter pointed out that no review was required for elective procedures scheduled after admission. This was inadvertent and has been corrected.

(3) Some commenters thought that the use of "reasonable belief" as a basis for preprocedure review could lead to arbitrary or unfair practices. The regulation clarifies HCFA's intent regarding preprocedure review. However, preprocedure review is required only when a PSRO has a reasonable belief based on either (a) documentation developed by the PSRO or (b) other sources of information, that indicate that a procedure generally in use may be medically unnecessary or inappropriately utilized.

(4) Some commenters thought that preprocedure review could constitute a burden to small rural hospitals that do not have enough associated physicians to do the review. Although this may be true, the patient's interest in avoiding the risks of an unnecessary procedure outweigh the potential reviewer difficulties involved in completing review, and we have not excepted rural hospitals from this requirement.

There is increased national concern over the problem of inappropriate utilization of surgical and other major diagnostic and therapeutic procedures. As noted earlier in this section, the regulations provide for PSROs to do preprocedure review when problems in inappropriate utilization are known or suspected. Administratively, HCFA assists PSROs in the problem identification process through the distribution of information on surgical procedures. PSROs are expected to use this information in their objective setting responsibilities (42 CFR 462.6). It is through the objective setting process that HCFA will monitor PSROs' efforts to address problems of inappropriate utilization of procedures. If HCFA discovers that a PSRO has not addressed inappropriate utilization of procedures, HCFA may take administrative action under 42 CFR 463.10 and 463.11 to require the PSRO to conduct preprocedure review.

G. Review in Case of Delayed Identification of Eligibility

This section has been clarified in response to comments. It provides the same review procedures as would have been used had the patient been identified as a Medicare or Medicaid patient on admission. Such cases are to be reviewed as soon as practical after identification, but no later than three working days after identification if the patient is in the hospital at the time of identification. The methods for handling adverse determinations in cases of delayed identification of eligibility are also included in the final regulations. We have not specified further review procedures, in order to allow sufficient flexibility to PSROs in developing procedures.

H. Notice of Adverse Determination

(1) Commenters suggested that denial notices should be rendered at the time of determination.

We agree and the rule was changed to state that the notice shall be personally delivered whenever feasible. Appropriate time limits are specified, depending on the circumstances, and notice provisions are included to cover situations of delayed identification of patient eligibility and PSRO review during an approved length-of-stay period.

(2) Comments have suggested that the relationship between the PSRO and Title V recipients regarding the effect of denial notices is not clear. The PSRO statute does not provide for automatic denial of payment in the case of a Title V recipient. However, a PSRO and a Title V State agency may arrange, by memorandum of understanding, that PSRO review determinations will be accepted by the Title V agency and that the PSRO will provide a reconsideration of the denial. Therefore, the regulation requires that a notice delivered in case of an adverse determination on a Title V claim explain whether or not the determination is accepted by the Title V agency for determining payment and whether or not the Title V recipient and provider have a right to a PSRO reconsideration of the denial.

I. PSROs and Health Maintenance Organizations (HMOs)

The regulation describes review procedures in short-stay hospitals, including those used or owned by HMO's. Commenters suggested that review of other care offered by prepaid health plans should be included in this regulation. However, HCFA has not yet developed procedures for review of services provided outside the institutional setting, so we do not include these services in this regulation.

J. Confidentiality

The regulations provides for limited access to patient records to provide information necessary to perform the PSRO review functions.

(1) Some commenters were concerned that the inclusion of non-federally funded patient's files in the PSRO review was a violation of a patient's privacy. However, this is not the case because the hospital obtains patient authorization before any PSRO use of the data. This authorization is usually secured in writing in the form of a permission for release of information, so that the individual is aware that his records may be disclosed.

(2) Commenters suggested increased confidentiality safeguards for data on private patients. Data collected on all patients, private and federally-funded, are subject to substantial confidentiality requirements and safeguards (Sec. 1166 of the Act) which we think are sufficient to protect the interests of all the patients whose files are reviewed. However, the response below is also pertinent.

(3) Some commenters feared that PSRO data from patient's files might be

disclosed under the Freedom of Information or Privacy Acts.

It is our position that the release of the information could not be compelled under these statutes because they do not apply to PSROs (Section 1166 of the Act). This position is reflected in the proposed rule Confidentiality and Disclosure of PSRO Information (44 FR 3058, Jan. 15, 1979). However, plaintiff in a recent lawsuit, Public Citizen Health Research Group v. Department of Health, Education, and Welfare, et al. 449 F. Supp. 937 (D.D.C. 1978) is seeking disclosure, under the Federal Freedom of Information Act (FOIA), of a substantial amount of PSRO information which identifies physicians and hospitals. In the event of a final court ruling that PSROs are subject to the FOIA and that PSRO data cannot be withheld from disclosure under the exemptions of the FOIA, substantial revision of the proposed regulation would be required. There has been no court order to disclose any information at this time and final resolution of the matter is expected to take some time.

(4) We agree with commenters who were concerned that the section of regulations regarding cooperation between the PSRO and other government agencies might be interpreted to permit excessive and unnecessary disclosure of information to the Title V, Medicare, and Medicaid agencies.

The intent of this regulation is to encourage data exchange to the extent it would serve the mutual purposes of PSROs and other agencies and minimize duplicate data acquisition activities. Accordingly, the language of the regulation has been changed to clarify that cooperation between these agencies and the PSRO, including the sharing of information, is limited to that necessary to carry out PSRO statutory purposes.

(5) Commenters recommended deletion of the requirement to publish lists of those hospital services which a PSRO plans to review prior to admission. PSROs are required by Section 1155(a)(3) of the Social Security Act to publish lists of services subject to preadmission review. Therefore, this requirement cannot be changed.

K. Timeframe for Review

The regulation provides for completion of admission reviews "as soon as feasible, but no later than three working days after the admission." We anticipate that this language will permit most reviews to be completed within one–two days, but, for example, will permit small hospitals to schedule reviews within the three-day limit, so that there will be no undue burdens on these institutions.

(1) Many commenters suggested that the timeframe be shortened, and some suggested that it be lengthened. As noted above, we expect most reviews to be completed as quickly as possible, but experience indicates that a decision on whether a patient needs a hospital level of care can be made on the basis of data available within three days, except in extenuating circumstances.

(2) Two commenters expressed concern that allowance of three working days for review would leave a hospital liable for payment for care in case of a denial of reimbursement by the Federal intermediaries or State agencies.

In the Medicare program, hospitals are protected from financial liability if they had no knowledge or reason to know that services were medically unnecessary, as determined by the PSRO (42 CFR 405.162). Therefore, Medicare fiscal intermediaries would not deny payment for services rendered prior to the delivery of the notice of adverse determination.

In the Medicaid program, HCFA offers FFP for hospital services rendered to a Medicaid recipient unless a PSRO disapproves the provisions of services. Section 1158(a) of the Act allows payment if the claimant is found to be "without fault" in the delivery of services. A regulation is under review which will describe the circumstances under which a claimant would be found to be "without fault."

(3) Commenters raised the question of whether the requirement for completion of continued stay review by the end of the initial assigned length-of-stay date would result in unnecessary review activity if review dates must be set only two or three days after admission.

The review must be completed within the assigned length of stay. In some cases this may occur within a few days of admission. However, the regulation allows sufficient flexibility in developing screening dates to minimize unnecessary reviews.

L. PSRO Relationship with Health Systems Agencies (HSAs) Health Systems Agencies, created under the National Health

Planning and Resources Development Act of 1974 (Pub. L. 93–641), were established to provide for areawide health planning and to guide the development of health resources in the health systems area. Two comments were received which suggested that the relationship between PSROs and HSAs should be clarified in regulation. This is not a necessary inclusion in this regulation since regulations regarding HSAs have dealt with the subject (42 CFR 122.1 et seq.). For example, these HSAs are required to seek to enter into written agreements with PSROs to coordinate their respective activities. These agreements must contain, at a minimum, provisions detailed in 42 CFR 122.107(a)(10).

M. Procedural Issues

Additional comments addressed numerous procedural issues in regard to PSRO hospital review. These comments and responses are as follows:

(1) Commenters noted that the proposed regulation required federal pay patients to be identified by the PSRO rather than the hospital. This was an error and has been corrected.

(2) Several commenters requested additions to the definitions. We have added definitions of concurrent quality assurance and adverse determination. The other terms are either described in or may be understood within the context of the body of the regulations or have been widely used in the Medicare and Medicaid programs.

(3) Comments suggesting minimum and maximum numbers of hospital days that could be assigned as an initial length of stay have not been accepted, because of the necessity to permit flexibility within the PSRO area.

(4) Commenters made three suggestions regarding the notice of adverse action.

(a) That only relatives may be notified if the patient is too unstable to receive such information. The regulation provides that the notice must be given to the patient, or a relative, or an appointed representative.

(b) That the notice be signed only by a peer of the attending health practitioner. The regulation requires that the decision must be made by a peer, but that the notice may be signed by any individual authorized to do so by the PSRO.

(c) That the date and method of delivery be included in the notice. We did not accept this suggestion because it would be an unnecessary administrative burden and this information is included in the PSRO's case file.

(5) Commenters requested that two changes be made to the requirements for reviewers.

(a) That a reviewer may not be a member of the same professional organization as the practitioner whose work is being reviewed. We did not accept this suggestion because this disqualification would severely limit the numbers of available peer reviewers.

(b) That PSRO membership be required for reviewers. Section

1155(d)(1) of the Act, which requires PSRO's to encourage all physicians to participate in review functions in the area, precludes our requiring that reviewers be members of the PSRO.

(6) Commenters favored expansion of the role of the PSRO in discharge planning. We did not expand this section because the authorized PSRO role does not include discharge planning, except as provided in Section 1158(d) of the Act.

(7) Suggestions for changes included setting time limits for HCFA to approve alternative review methods and to act on a hospital's refusal to enter.

We intend to act on these issues in a timely manner. However, we wish to maintain the flexibility to negotiate these issues with the parties involved, so we have not limited the time available for negotiation.

(8) Some commenters suggested deleting requirements for PSRO reports.

These reports are necessary to assure adequate information for administration of the program as well as being a requirement of the statute (Section 1157).

N. Delegation of PSRO Review to Hospitals

The regulation provides a process for the PSRO to delegate the conduct of concurrent review and MCE studies to capable hospitals that desire to perform these functions.

Commenters offered suggestions on this process as follows:

(1) Hospital submission of letter of interest.

(a) The hospital, not the hospital's review committee, should forward the letter of interest. This change has been made.

(b) The chairman of the governing board should sign the letter.

It is usual for the chief administrative official of the hospital to act for the governing board in matters of this sort. The regulation recognizes this and the language of the proposed rule is maintained. However, this in no way precludes the chairman from signing the letter, as well as the two signors required by the regulation.

(2) Hospital submission of a review plan. Commenters suggested that State Medicaid agencies be given the authority to develop jointly with the hospital the section of the review plan describing Medicaid hospital relationships.

We agree and have revised the regulation to allow this involvement between the providers and the paying agencies.

(3) PSRO determination of a hospital's capability. Commenters suggested that the State Medicaid agencies be involved in this process in the following ways:

(a) To review and approve criteria for delegation and reassessment of delegation.

We did not accept the suggestion to include this in the regulation because this is the sole responsibility of the PSRO (Section 1155(e) of the Act). However, we encourage the PSRO to use all available resources, including the State Medicaid agencies, in developing criteria.

(b) To document a hospital's lack of capability to perform delegated review and have this documentation be a sole ground for Departmental disapproval of the delegation.

We anticipate that the State agency, as part of its monitoring function, will compile information and recommendations in regard to a delegated hospital's review capability. HCFA will take this information into consideration when we determine if there is good cause for disapproval of a PSRO's delegation determination. However, the State agency's recommendation will not be the sole determinant.

(4) PSRO/hospital written delegation agreement or PSRO initiation of review in nondelegated hospitals.

(a) It was suggested that the requirement for HCFA approval of a hospital model agreement be deleted.

We agreed that HCFA approval of a model agreement is not necessary, since the specific provisions required in the agreement are listed in § 466.35.

(b) A commenter suggested withholding implementation of nondelegated review when a hospital desires delegation but needs technical assistance to improve its review capabilities.

The PSRO may revise its timetable for implementation of nondelegated review and provide technical assistance to the hospital to help it achieve delegated status. However, the PSRO may implement nondelegated review pending a hospital's development of delegated review capability.

(c) Several commenters suggested partial delegations.

(i) A comment suggested delegation of either the review coordinator or physician reviewer functions.

This was allowed in the proposed regulation and has been retained.

(ii) It was suggested that a hospital department could receive delegation even if the whole hospital could not.

We did not accept this suggestion because a PSRO needs to work with the administration of the whole hospital, as well as the staff of the various departments, to be effective.

(iii) Delegation of either admission or continued stay review was suggested.

This was not accepted because it would be inefficient to delegate only a part of the concurrent review process.

(d) Some commenters recommended deletion of HCFA's right to disapprove delegations.

This disapproval authority is statutory (Section 1155(e)(1)), so it will not be modified.

(e) Several comments were received suggesting additions, modifications or deletions of timeframes.

We did not accept these suggestions because the experience of PSRO's has shown these timeframes to be appropriate.

(g) One commenter recommended that the section on PSRO procedures in a nondelegated hospital include a statement of confidentiality.

The specific provisions on confidentiality are being addressed in another regulation and are not included here (proposed rule 44 FR 3058, Jan. 15, 1979).

(8) A commenter suggested that methods for replacement of unsatisfactory PSRO employees be included in this regulation.

PSRO's are private employers, and this regulation will not be used to establish PSRO employment practices.

O. Medicaid/PSRO Memorandum of Understanding (MOU)

Commenters recommended that provisions be included in regulations for MOUs between PSROs and State Medicaid agencies. Regulations regarding such MOUs, and HCFA discussion of the reasons for the regulations, are found in publication of the final PSRO "Assumption of Review Responsibility" regulations, in the **Federal Register** on February 22, 1978 (43 FR 7400). Therefore, this subject is not included in this regulation.

P. PSRO Disputes with Delegated Hospitals

(1) One commenter was concerned that HCFA settlement of disputes would mean that other modes of settlement were precluded. Additionally, the writer suggested that guidelines be set for HCFA to follow in making a determination in regard to disputes.

The regulation has been revised to permit the hospital to seek a reconsideration of a PSRO determination from the PSRO, and permits complaints to HCFA if the

outcome of the reconsideration is unsatisfactory.

(2) Another commenter suggested that disputes first be handled by Statewide Councils in areas where these groups are functioning.

The Statewide Council does not have a statutory role in delegation disputes and we believe that the disputes can be resolved most expeditiously by not including an additional layer of review.

Q. Reconsideration of a Hospital's Capability to Perform Delegated Review

(1) A suggested change in language has been accepted.

The language of the final rule clarifies the intent of allowing a hospital a period of up to 60 days to submit a request for reconsideration.

(2) We did not accept the suggestion that the reconsideration committee consist of local physician review committee members.

This will permit any PSRO physician to be a member of the reconsideration committee.

R. Hospital Review Committee

One commenter suggested that a hospital review committee of one physician ("one or more physicians") would be inadequate.

We have retained this description to permit flexibility in unusual situations, such as small rural hospitals with limited access to reviewers.

S. Previously Approved Delegations

Section 466.1(b)(2) provides that the requirements specifying the process of delegation would not apply if a hospital had been delegated review activities prior to the effective date of these regulations. These existing delegations would have been made according to procedures outlined in PSRO guidelines *(PSRO Program Manual,* Section 720). One commenter recommended incorporating the actual language of these guidelines in the regulation.

We have incorporated this process of delegation by reference. We do not agree that it is also necessary to incorporate the language since it is replaced by this regulation.

T. Norms, Criteria and Standards

The language of § 466.53 has been clarified to be consistent with § 466.13 and the comments received regarding review of procedures. Thus, criteria specifying the necessity for elective surgical or other major diagnostic or therapeutic procedures are included along with the other criteria described as necessary for concurrent review.

(1) The regulation provides for establishment by PSROs of certain diagnoses, conditions, clinical areas, or procedures which would be automatically certified for admission.

These will be identified on the basis of an analysis of normative data and prior experience documenting consistently appropriate utilization of services.

Some commenters suggested that collecting data for analysis would not be necessary in all cases. For example, commenters stated that certain diagnoses, problems and conditions may be exempted from review because of wide agreement of appropriate level of care.

We agree that analysis would not be necessary in all cases and have added a new category which provides for identification of diagnoses, problems, or conditions (e.g., endotoxic shock, acute pulmonary embolism, or open compound fracture), which would justify a hospital level of care. These automatically certified diagnoses, problems, and conditions are to be in the PSROs' criteria sets which are submitted to HCFA for review. Any significant differences from regional criteria will be referred by HCFA for review to the National Council.

(2) The Preamble to the proposed regulation stated that the review coordinator might alter length-of-stay projections to allow for individual patient differences. Since length-of-stay projections are criteria defining the time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge, this modification for individual circumstances is appropriate.

One commenter suggested that the decision to alter this projection should be made by a PSRO physician rather than a review coordinator.

We did not modify the language in the regulation to define this activity. However, we anticipate that PSROs will permit the review coordinator to adjust length-of-stay projections, with the guidance of a physician advisor.

For example, the PSRO may choose to define limits within which a review coordinator would be free to adjust length-of-stay projections.

(3) Commenters recommended clarification of the definitions of norms, criteria, and standards, particularly in regard to "regional norms, criteria, and standards."

No revision of the definitions is needed since the definitions of norms, criteria, and standards are those which have been in use throughout the PSRO program for several years and, to our knowledge, have not produced misunderstanding among the people who must use them. Use of the term "regional norms, criteria, and standards" is clarified by the usage within the body of the regulations, and further guidelines on its meaning are being developed by HCFA.

(4) It was suggested that retention of HCFA responsibility for identification of significant differences from regional norms, criteria, and standards would weaken local PSRO authority.

HCFA cannot disapprove the norms. Only the National Professional Standards Review Council can do this. The objective of retention of HCFA responsibility is to ease the enormous administrative burden of reviewing the norms from all of the PSROs which is placed on the National Council. Hence, the HCFA role is to assist the National Council in the identification of variant norms, criteria, and standards.

(5) Commenters expressed concern that misinterpretations would result if the PSRO norms, criteria, and standards were made available to the public. Therefore, they suggested that this section be deleted. One comment was received which requested expanded disclosure of PSRO methods and activities. Others advocated changing the requirement for notification of availability from publication in local "medical periodicals" to publication in "relevant professional periodicals" in order to increase the involvement of health care practitioners other than physicians.

This disclosure represents a means to inform consumers of the standards against which medical necessity and appropriate level of care and consequent reimbursement of their health services are being measured. In addition, the use of the term "medical periodicals" should be adequate to ensure disclosure in any professional health care publications which serve practitioners other than physicians.

42 CFR Chapter IV is amended by adding a new Part 466 to read as follows:

PART 466—PSRO HOSPITAL REVIEW

Subpart A—General Provisions

Sec.

466.1 Statutory provisions and applicability.
466.2 Definitions.
466.3 Review objectives.
466.4 Examination of the operation and records of hospitals.
466.5 Refusal of hospital to allow PSRO entry and performance of review.
466.6 Reports to HCFA.

Subpart B—PSRO Review

Sec.
466.10 General requirements for concurrent review.
466.11 Admission review.
466.12 Continued stay review.
466.13 Elective procedures review.
466.14 Preadmission review.
466.15 Modifications of review activities.
466.16 Notice of adverse determination.
466.17 Informing discharge planners.
466.18 Medical care evaluation (MCE) studies.
466.19 Profile analysis.
466.20 Involvement of health care practitioners other than physicians.
466.21 Reviewer qualifications and participation.
466.22 Alternative review methods.

Subpart C—Delegated Review

466.30 Opportunity for hospitals to seek delegation.
466.31 Letter of interest.
466.32 Details of delegated review plan.
466.33 Determination and notice of hospital capability.
466.34 Delegation of review activities.
466.35 Agreement with delegated hospitals.
466.36 PSRO monitoring and reassessment of hospital capability.
466.37 Reconsiderations.
466.38 Monitoring by HCFA.
466.39 PSRO responsibilities when delegation is denied, withdrawn, or disapproved.

Subpart D—Norms, Criteria, and Standards for Review

466.50 Basic requirement for PSRO area norms, criteria, and standards.
466.51 Establishment of norms, criteria, and standards.
466.52 Dissemination of norms, criteria, and standards.
466.53 Use of norms, criteria, and standards.
466.54 Revisions.
466.55 Regional norms, criteria, and standards.
466.56 Review of PSRO norms, criteria, and standards.

Authority: Secs. 1102, 1155, 1156, and 1165 of the Social Security Act (42 U.S.C. 1302, 1320c–4, 1320c–5, and 1320c–14).

Subpart A—General Provisions

§ 466.1 Statutory provisions and applicability.

(a) *Statutory provisions.* (1) Section 1155(a) of the Social Security Act requires that each PSRO assume, at the earliest date practicable after designation of a PSRO by HCFA, responsibility for the review of the professional activities of institutional and non-institutional providers and physicians and other health care practitioners in the provision of health care services under Medicare, Medicaid, and the Maternal and Child Health and Crippled Children's programs. The purpose of PSRO review is to determine whether:

(i) The services and items are or were medically necessary;

(ii) The quality of the services meets professionally recognized standards of health care; and

(iii) Those services and items proposed to be provided on an inpatient basis could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

(2) Section 1155(e) of the Act requires PSROs to use the services, and accept the findings, of hospital review committees that demonstrate their capacity to carry out review functions in a timely and effective manner and provides that the Secretary may, for good cause, disapprove such acceptance.

(3) Section 1156 of the Act requires that, in carrying out its review responsibilities, each PSRO shall apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice in its area as principal points of evaluation and review.

(b) *Applicability.* (1) Unless otherwise indicated, the provisions of this part apply to hospital review functions performed by the PSRO or by hospital review committees to which the PSRO has delegated those functions in accordance with Subpart C of this part.

(2) However, the provisions on notification, evaluation prior to delegation, and delegation (§ 466.30 through § 466.35) do not apply if a delegation took place before [the effective date of this part] under procedures approved by the Department.

§ 466.2 Definitions.

As used in this Part, unless the context indicates otherwise:

"Act" means the Social Security Act (42 U.S.C. Chap. 7).

"Active staff privileges in hospital" means: (a) that a physician is authorized on a regular, rather than infrequent or courtesy, basis; (1) to order the admission of patients to a hospital; (2) to perform diagnostic services in a hospital; or (3) to care for and treat patients in a hospital; or (b) that a health care practitioner other than a physician is authorized on a regular, rather than infrequent or courtesy, basis to order the admission of patients to a hospital.

"Admission review" means a review and determination by a PSRO of the medical necessity and appropriateness of a patient's admission to a hospital level of care.

"Adverse determination" means an initial negative decision by a PSRO, or by a delegated hospital review committee, regarding the medical necessity, quality, or appropriateness of health care services provided or proposed to be provided to a patient.

"Assigned length of stay" means the number of days between admission and the date the PSRO would ordinarily complete the determination of the medical necessity of continued hospital stay.

"Area" means the geographic area for which a PSRO has been designated.

"Automatic certification" means PSRO approval of the provision of health care services to a patient without performance of admission review, or without performance of both admission review and continued stay review.

"Certified length of stay" means a period of time which a PSRO approves as a medically necessary and appropriate period for a patient to receive inpatient care in a hospital.

"Concurrent quality assurance" means a form of review that focuses on the quality of health services furnished to individual patients, performed while the patient is in the hospital.

"Concurrent review" means a review and determination focused on the necessity and appropriateness of inpatient hospital services performed while the patient is in the hospital. It includes admission review, continued stay review and, when appropriate, procedure review.

"Continued stay review" means PSRO review and determination, after admission review and during a patient's hospitalization, of the medical necessity and appropriateness of continuing the patient's stay at a hospital level of care.

"Criteria" means predetermined elements of health care, developed by health professionals relying on professional expertise, prior experience, and the professional literature, with which aspects of the quality, medical necessity, and appropriateness of a health care service may be compared.

"Delegated Hospital" means a hospital to which PSRO review functions are delegated under Subpart C.

"Elective," when applied to admission or to a health care service, means an admission or a service that can be delayed without substantial risk to the health of the individual.

"Federal program patient" means a patient who is or may be eligible to have payment made on his behalf under the Medicare, Medicaid, or Maternal and

Child Health and Crippled Children's programs.

"HCFA" means the Health Care Financing Administration.

"Health care practitioners other than physicians" means those health professionals who do not hold a doctor of medicine or doctor of osteopathy degree, who meet all applicable State or Federal requirements for practice of their professions, and who are in active practice.

"Health care service" means a service or item, including hospitalization, for which payment may be made (in whole or in part) under the Act.

"Hospital" means a health care institution or distinct part of a health care institution, as defined in Section 1861(e)-(g) of the Act, other than a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

"Hospital review committee" means a committee established to direct PSRO review in a delegated hospital.

"Independent admitting privilege" means the privilege granted to a practitioner to place patients in a hospital on his own initiative without having to obtain the concurrence of any other health care practitioner.

"Intermediate care facility (ICF)" means a health care institution or distinct part of an institution that (a) provides health related care services to individuals who do not require hospital or skilled nursing facility care, and (b) is certified to participate in the Medicaid program.

"Length-of-stay norms" means established statistical measures of average lengths of stay for patients of similar age and diagnosis or condition.

"Length-of-stay projection" means a criterion which defines the time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge.

"Major clinical area" means medicine, surgery, pediatrics, obstetrics and gynecology, or psychiatry.

"Major procedure" means a diagnostic or therapeutic procedure which involves a surgical or anesthetic risk or requires highly trained personnel or special facilities or equipment.

"Medical care evaluation (MCE) study" means an assessment, performed retrospectively, of the quality, or nature of the utilization, of health care services. If indicated, corrective action is taken, and a subsequent assessment is made of the impact of the corrective action.

"National Council" means the National Professional Standards Review Council.

"Nondelegated hospital" means a hospital in which the PSRO conducts review activities using its own review procedures, and has not delegated review activities to the hospital under Part 466, Subpart C of this chapter.

"Norms" means numerical or statistical measures of average observed performance in the delivery of health care services.

"Other attending health care practitioner" means a practitioner, other than physician, who has independent hospital admitting privileges or primary responsibility for care of a particular patient, or both.

"Peer review" means review by health care practitioners of services ordered or furnished by other practitioners in the same professional field.

"Physician" means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy (including medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

"Preadmission review" means a PSRO review and determination, prior to a patient's admission to a hospital, of the medical necessity and appropriateness of an elective health care service.

"Procedure review" means a review and a determination by a PSRO of the medical necessity of, and appropriateness of hospital level of care for, surgery or other major diagnostic or therapeutic procedure.

"Profile" means aggregated data in formats that display patterns of health care services over a defined period of time.

"Profile analysis" means review and analysis of profiles to identify and consider patterns of health care services.

"PSRO" means Professional Standards Review Organization.

"PSRO representative" means a physician or other health care practitioner or an appropriately trained individual who performs hospital review activities on behalf of the PSRO.

"PSRO review" means a review performed by a PSRO or by a hospital review committee to which the PSRO has delegated review functions.

"Regional norms, criteria, and standards" means norms, criteria, and standards that apply to a geographic division which is larger than a PSRO area.

"Secretary" means the Secretary of Health, Education, and Welfare or any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

"Skilled nursing facility (SNF)" means a health care institution that (a) is primarily engaged in providing skilled nursing care or rehabilitative services to injured, disabled, or sick persons, and (b) is certified to participate in Medicare or Medicaid or both.

"Standards" means professionally developed expressions of the range of acceptable variation from a norm or criterion.

"Working day" means any one of at least five days of each week (excluding, at the option of each PSRO, legal holidays) on which the necessary personnel are available to perform review in the hospital.

§ 466.3 Review objectives.

(a) *PSRO review objectives.* In order to satisfy the statutory provisions, each PSRO must establish objectives for hospital review, initiate actions to achieve these objectives, and document the results of efforts and the impact of review on the PSRO area.

The objective setting process for hospital reviews includes:

(1) Identifying problem areas;

(2) Setting objectives;

(3) Defining a methodology or strategy for accomplishing these objectives;

(4) Assessing the results of activities to achieve objectives;

(5) Providing feedback of the results to affected health care practitioners and providers; and

(6) Establishing new or revised objectives.

(b) *HCFA review.* HCFA reviews PSRO objective setting process as described in § 462.6(b)(6) and assesses the results of the objective setting activities described in this part, and in 42 CFR 463.11.

§ 466.4 Examination of the operation and records of hospitals.

(a) *PSRO authorization to examine for certain purposes.* A PSRO may examine the operation and records pertinent to health care services provided to Federal program patients in any hospital in the PSRO area, as necessary to:

(1) Perform nondelegated review functions;

(2) Evaluate cases which preadmission review, concurrent review, MCE studies, or profile analyses have shown to deviate from the PSRO norms, criteria, or standards;

(3) Evaluate the capability of the hospital to assume delegated PSRO functions; or

(4) Monitor the performance of a hospital that has assumed delegated PSRO functions.

(b) *Records of non-Federal program patients.* A PSRO may examine the records of patients other than Federal program patients only if access to those records is authorized by the hospital.

(c) *Conditions of examination.* When examining a hospital's operation or records the PSRO must:

(1) Limit the examination to those operations and records necessary to achieve the purposes of paragraph (a) of this section;

(2) Cooperate with agencies responsible for other examination functions under Federal programs in order to minimize duplication of effort;

(3) Conduct the examinations during reasonable hours;

(4) Maintain written records of the examination in its principal office; and

(5) Provide copies of written reports, which may result from the examination, to:

(i) Appropriate members of the medical staff of the hospital, and

(ii) The chief administrative official of the hospital, and

(iii) The Chairman of the Board of Trustees (or other governing body) of the hospital.

§ 466.5 Refusal of hospital to allow PSRO entry and performance of review.

If a hospital refuses to allow a PSRO to enter and perform all PSRO duties and functions required under this part, the PSRO may determine that the hospital has violated the obligations imposed under Section 1160(a)(1)(C) of the Act and report the matter to HCFA.

§ 466.6 Reports to HCFA.

Each PSRO shall submit reports, at the times and in the form that HCFA may require, to show how it has fulfilled the responsibilities specified in this part.

Subpart B—PSRO Review

§ 466.10 General requirements for concurrent review.

(a) *Candidates for review.* Except as provided in § 466.15, a PSRO must perform admission and continued stay review and, when appropriate, procedure review on each Federal program patient identified by the hospital.

(b) *Basis for determination of appropriateness.* (1) In the case of Medicare beneficiaries, the PSRO must determine whether a particular level of care is appropriate in accordance with the level-of-care provisions in Sections 1814 and 1861 of the Act, 42 CFR 405.116, 405.126–405.128a, and pertinent guidelines issued by HCFA.

(2) In the case of Medicaid recipients, the PSRO must determine whether a particular level of care is appropriate in accordance with the level-of-care provisions in Section 1905 (c), (d) and (f) of the Act, 42 CFR Part 442, Subparts C, D, E, F, and G and pertinent guidelines issued by HCFA.

(c) *Effect of PSRO determination on services incident to hospitalization.* (1) A PSRO certification of a patient's admission or continued stay will constitute approval of all health care services provided, or proposed to be provided, during the certified length of stay unless the PSRO specifically reviews and disapproves a particular service.

(2) A PSRO adverse determination of a patient's admission or continued stay will constitute disapproval of all health care services provided, or proposed to be provided, during the patient's hospital stay unless the PSRO specifically reviews and approves a particular service.

(d) *Coverage determinations.* Nothing in §§ 466.10 through 466.16 shall be construed as precluding a Medicare intermediary or carrier of a Medicaid State agency, in the proper exercise of its duties and functions, from:

(1) Reviewing claims to determine whether they meet the pertinent coverage requirements of Medicare or Medicaid; or

(2) Requesting the PSRO to make a retrospective determination regarding the medical necessity and appropriateness of specific health care services in the application of coverage requirements.

(e) *Attending physician's opportunity to discuss.* Before a PSRO reaches an adverse determination regarding admission, continued stay, or elective procedures, it must:

(1) Promptly notify the patient's attending physician or other attending health care practitioner; and

(2) Afford an opportunity for the practitioner to discuss the matter with the PSRO and explain the nature of the patient's need for health care sevices, including all factors which preclude treatment of the patient as an outpatient or in an alternative level of inpatient care.

§ 466.11 Admission review.

(a) *Nature of review.* (1) Admission reviews must consist of screening and, if the conditions specified in the screen are not met, peer review.

(2) Screening review must be conducted using norms, criteria and standards developed in accordance with Subpart D of this part to select those cases requiring peer review.

(3) If the PSRO determines that the admission is medically necessary and appropriate, it will certify the admission.

(4) If the PSRO determines that the hospital admission is not medically necessary or not appropriate, it must provide notice of an adverse determination regarding the patient's admission in accordance with § 466.16.

(b) *Timing of review.* (1) Admission review shall be completed, and certification or adverse notice provided, as soon as feasible, but no later than three working days after the admission.

(2) In the case of a patient whose eligibility for benefits is identified at some time after admission, the PSRO shall review the medical necessity and appropriateness of level of care of admission and continued stay as soon as feasible but no later than three working days after identification, if the patient is in the hospital at the time.

(c) *Initial assigned length of stay.* If an admission is certified under paragraph (a)(3) of this section, the PSRO shall assign an initial length of stay based on:

(1) Length-of-stay projections developed by the PSRO in accordance with Subpart D of his part (modified, as necessary, to reflect the clinical situation of the individual patient who is the subject of the admission review); or

(2) The 50th percentile of lengths of stay for patients in similar age groups with similar diagnoses, if the PSRO has not developed length-of-stay projections; or

(3) A reasonable estimate, considering the nature of the patient's medical problem and the projected date when the diagnosis will be more fully clarified, if the diagnosis is unclear at the time of admission, or length-of-stay projections and norms are unavailable; or

(4) The time when a critical procedure or outcome is expected to occur, as determined by the PSRO, if the PSRO is conducting concurrent quality assurance.

§ 466.12 Continued stay review.

(a) *Nature of review.* (1) Continued stay review must consist of screening and, if the conditions specified in the screen are not met, further peer review.

(2) Screening review shall be conducted by a PSRO representative using PSRO criteria and standards developed in accordance with Subpart D of this part to select those cases requiring peer review.

(3) If the PSRO determines that continued stay is medically necessary and at the appropriate level of care, it shall assign a continued length of stay by the end of the previously assigned length-of-stay period.

(4) If the PSRO determines that continued stay is not medically necessary or not at the appropriate level of care, it shall provide notice of adverse determination by the last day of the current assigned length-of-stay period, in accordance with § 466.16.

(b) *Timing of review.* Continued stay review must be completed by the last day of the initial assigned length of stay.

(c) *Duration of continued length of stay.* A continued length of stay must be based on the expected time when the patient will no longer require a hospital level of care.

(d) *Additional continued stay review.* Before the expiration of a continued length of stay, each case must be reviewed again in the manner prescribed under paragraphs (a), (b), and (c) of this section. These reviews shall be repeated as long as the continued stay is further assigned by the PSRO.

(e) *Physician certification.* (1) *Basic requirement.* The PSRO must require the attending physician, or other attending health care practitioner to certify, at times specified by the PSRO, to the medical necessity for the patient's continued stay in the hospital.

(i) The first certification shall be no later than the last day of the initial length of stay assigned by the PSRO under § 466.11(c).

(ii) Subsequent certification dates shall be established by the PSRO at intervals to allow for PSRO review.

(2) *Information required.* (i) The PSRO shall specify the information that must be included in the medical record in order to enable the PSRO to evaluate the patient's need for further health care at the hospital level.

(ii) The PSRO may either specify that such information will be provided in progress notes and orders signed and dated by the physician or other health care practitioner attending the patient or require a form of physician certification separate from the medical record.

(f) *PSRO responsibilities.* (1) The PSRO shall inform all physicians and other health care practitioners who are accorded active staff privileges in hospitals and engaged in professional activities in the PSRO area of:

(i) The applicable certification requirements for physicians and other health care practitioners;

(ii) Their obligation not to provide unnecessary health care services; and

(iii) The sanctions under Section 1160 of the Act.

(2) The PSRO shall maintain, at its principal business office, and make available to HCFA, fiscal intermediaries, State agencies and other interested parties, copies of:

(i) Its physician certification requirements; and

(ii) Its procedures for informing physicians and other appropriate health care practitioners of those requirements.

§ 466.13 Elective procedures review.

(a) *On admission.* If a purpose of admission is to perform elective surgery or an elective major procedure, the PSRO must conduct procedure review simultaneously with admission review. Procedure review must be completed prior to the procedure, whenever feasible, but no later than three working days after the admission.

(b) *During hospitalization.* If elective surgery or an elective major procedure, not a stated purpose of admission, is scheduled during hospitalization, the PSRO must conduct procedure review before the procedure is performed, whenever feasible.

(c) *Required preprocedure review.* If the PSRO has a reasonable belief, based on documentation it has developed or on other information, that there is medically unnecessary or inappropriate utilization of elective surgery or elective major procedures, it must conduct procedure review before the surgery or procedure is performed.

§ 466.14 Preadmission review.

(a) *General authority.* The PSRO may review, prior to admission, the medical necessity and appropriateness of any health care service to be provided to a patient on an elective basis. This review must be conducted in accordance with the applicable review activities prescribed in § 466.10 and § 466.11.

(b) *Publicizing requirement.* If the PSRO chooses to perform preadmission review, it must:

(1) Develop a list of the types of health care services for which preadmission review will be performed;

(2) Publish the list, and any subsequent revisions, in a medical publication of general circulation in the area;

(3) Provide copies to the chief of each hospital medical staff for distribution within the hospital; and

(4) Make a copy of the current list available for inspection in the PSRO office during regular business hours.

(c) *Review upon request.* Any attending physician, or other attending health care practitioner, proposing to provide elective health care services may request the PSRO to perform preadmission review in accordance with paragraph (a) of this section. The PSRO shall comply with the request whenever feasible.

§ 466.15 Modifications of review activities.

(a) *Basic requirements.* When a PSRO has developed the review capability and data base necessary, it must modify the review activities specified in §§ 466.11 through 466.14 in order to concentrate review efforts in areas where improvement in the utilization or the quality of health care services is needed.

(b) *Automatic certification.* (1) A PSRO must use data and prior experience to identify cases appropriate for automatic certification of admission or an entire hospital stay, based on:

(i) Diagnoses, problems, and conditions for which the criteria indicating the presence of the diagnoses, problems, or conditions are consistently met;

(ii) Elective surgical and other major elective diagnostic and therapeutic procedures that are consistently medically necessary, and are performed at a consistently appropriate level of care;

(iii) Major clinical areas in a hospital or entire hospitals in which admissions are consistently medically necessary and at the appropriate level of care;

(iv) Major clinical areas in a hospital or entire hospitals in which both admissions and continued stays are consistently medically necessary and at the appropriate level of care; or

(v) Individual practitioners whose admissions, or both admissions and continued stays, are consistently at an appropriate level of care and medically necessary.

(2) If an admission, but not the entire length of stay, is automatically certified, a length of stay must be assigned in accordance with § 466.11 and continued stay review must be performed in accordance with § 466.12.

(c) *Continuing PSRO responsibility.* The PSRO must, through concurrent and retrospective studies and profile analysis, assure that admissions and hospital stays automatically certified under this section continue to represent consistently appropriate utilization of hospital care or quality of health care services provided, or both.

(d) *Hospital modifications.* Hospitals performing review for the PSRO in accordance with Subpart C of this part may modify their review activities, as specified in paragraphs (a) through (c) of this section, if the modifications are approved by the PSRO.

(e) *HCFA review.* HCFA may require notification from PSRO of the categories of cases that are subject to modified review. HCFA may require reinstitution of concurrent review for up to 100 percent of the cases for any or all of the categories of cases if it finds, through monitoring, that the PSRO's modified review system is ineffective, inefficient, or not based on appropriate documentation.

§ 466.16 Notice of adverse determination.

(a) *Parties to be notified.* A PSRO shall provide written notice of an adverse determination to:

(1) The patient or, if the patient is expected to be unable to comprehend the notice, the patient's next of kin, guardian, or sponsor;

(2) The attending physician, or other attending health care practitioner; and

(3) The hospital.

(b) *Content of the notice.* The notice shall include:

(1) The reason for the determination;

(2) The date after which the stay in the hospital will not be approved as being medically necessary or appropriate;

(3) A statement informing the parties and their representatives of their right to reconsideration of the determination (see 42 CFR Part 473);

(4) The locations for filing a reconsideration request and the time period within which a request must be filed; and

(5) A brief statement concerning the duties and functions of the PSRO under the Act.

(c) *Title V patients.* The notice to a patient who is eligible for benefits under the Maternal and Child Health and Crippled Children's Programs (Title V of the Act) shall also indicate if:

(1) Under agreement between the PSRO and the State Title V agency, the determination is conclusive for payment purposes; and

(2) The Title V recipient and provider have a right to reconsideration.

(d) *Timing of the notice.* The notice shall be delivered to those hospitalized or mailed to those not hospitalized within the following time limits:

(1) For admission, within three working days after admission;

(2) For continued stay, by the last day of the previously approved length-of-stay period, or the day after the determination, whichever is earlier;

(3) For preprocedure review, before the procedure is performed;

(4) For preadmission review, before admission; and

(5) If identification as a Federal program patient has been delayed, within three working days of identification if the patient is still in the hospital.

(e) *Notice to payers.* The PSRO must provide prompt written notice of an adverse determination to:

(1) The Medicaid State agency or its designee, in the case of a Medicaid patient;

(2) The Medicare intermediary or carrier, or both, in the case of the Medicare patient; or

(3) The affected State Title V agency, in the case of a Title V patient.

(f) *Record of adverse determinations.* (1) The PSRO must document and preserve a record of all adverse determinations.

(2) The documentary record shall include:

(i) The detailed basis of the determination of the practitioner or committee that conducted the review; and

(ii) A copy of the notice of adverse determination sent to all parties.

§ 466.17 Informing discharge planners.

If a PSRO becomes aware, in the course of review, that a patient may require extended post-hospital care or institutional placement, the PSRO must promptly alert, in writing:

(a) The attending physician, or other attending health care practitioner; and

(b) Those in the hospital responsible for assisting the attending practitioner in discharge planning.

§ 466.18 Medical care evaluation (MCE) studies.

(a) *Number of studies required.* During each calendar year, a PSRO must perform at least the following numbers of MCE studies, unless this requirement is waived by HCFA:

(1) Four studies in each hospital with less than 2,500 total admissions per year;

(2) Six studies in each hospital with 2,500 to 4,999 total admissions per year;

(3) Eight studies in each hospital with 5,000 to 9,999 total admissions per year;

(4) Ten studies in each hospital with 10,000 to 19,999 total admisssions per year; and

(5) Twelve studies in each hospital with 20,000 or more total admissions per year.

MCE studies that involve more than one hospital shall be counted toward the number of studies required for each of the hospitals involved in the study.

(b) *Required coverage.* The studies performed each year must include assessment of the care of patients in all major clinical areas in a hospital. In addition, MCE studies must, when relevant, include assessment of care provided by other health care practitioners as well as care provided by physicians.

(c) *Nature and content of studies.* In conducting an MCE study, the PSRO must:

(1) Focus upon a known or suspected problem area in organization, delivery, or outcome of hospital care;

(2) Carry out the study in accordance with specifically developed and explicitly stated objectives;

(3) Use criteria and standards specified in paragraph (d) of this section;

(4) When appropriate, use a sample of patients (and their records) selected from all the patients in the hospital if the hospital authorizes access to records of non-Federal program patients;

(5) Provide for peer analysis of any substantial divergence from criteria, to determine whether it is justified or represents problems that require corrective action;

(6) Make recommendations, consistent with the regulations of this subchapter on confidentiality of PSRO data (42 CFR part 476), for corrective action to individuals and organizations responsible for effecting change in the organization, administration, and delivery of health care;

(7) Document when, where, and by whom any recommended corrective action was taken;

(8) Include a plan for follow-up evaluation, when indicated, to determine what changes have occurred as a result of action taken;

(9) Perform, when indicated, a follow-up evaluation (not to be counted as a new MCE study for purposes of fulfilling the requirements in paragraph (a) of this section):

(i) Within a reasonable time, but usually no later than one year after completion of the study; and

(ii) Limited to key indicators relevant to the particular study; and

(10) Provide for periodic reporting of a summary of the quality assurance activities to the governing body of the hospital.

(d) *Use of criteria and standards.* (1) A PSRO must adopt and use criteria and standards (in accordance with Subpart D of this part), that relate to the specific objectives of the study.

(2) If a PSRO identifies a pattern of performance that does not conform to applicable criteria, it must subject the services involved in that pattern to further analysis.

(3) The identification of such a pattern does not necessarily constitute a finding by the PSRO that those services were

not medically necessary, not of acceptable quality, or not provided at the appropriate level of care.

(e) *Reports to hospitals.* (1) A PSRO must provide the written results, including an analysis of the results, of each MCE study that is pertinent to the operation of a particular hospital to:

(i) Appropriate members of the hospital medical staff;

(ii) The chief administrative official of the hospital; and

(iii) The Chairman of the Board of Trustees (or other governing body) of the hospital.

(2) The PSRO must comply with the confidentiality requirements of Section 1166 of the Act, and applicable regulations.

§ 466.19 Profile analysis.

(a) *Types of profiles.* A PSRO must be responsible for the periodic development and analysis of profiles of:

(1) Health care services provided to patients in hospitals in the PSRO area;

(2) Each health care practitioner who provides health care services in hospitals in the PSRO area; and

(3) Each hospital in the PSRO area that provides health care services.

(b) *Process of profile analysis.* (1) Depending upon the nature of the profile, the process of analysis must include:

(i) Comparison of patterns of care by similar providers (institutions or practitioners);

(ii) Comparison of current patterns with previous patterns;

(iii) Identification of patterns that deviate from established norms, criteria, and standards; or

(iv) Tracking of the care provided to particular patients or by particular practitioners within the entire PSRO area.

(2) If a PSRO identifies questionable patterns, it must:

(i) Take appropriate follow-up action; and

(ii) Monitor the results of the action taken.

(c) *Purposes of analyses.* The PSRO must analyze profiles:

(1) To identify patterns of service which may require modifications in review activities;

(2) To identify possible subjects for MCE studies;

(3) For self-evaluation of PSRO performance, including comparison with other areas and regions of the country;

(4) To compare the performance of different providers (institutions or practitioners) in a PSRO area;

(5) To monitor review activities delegated to hospitals in accordance with Subpart C of this part; and

(6) To determine whether the care and services ordered or provided were necessary, appropriate, and of acceptable quality.

(d) *Provision of profiles to hospitals.* A PSRO must provide the profiles which are pertinent to the operations of a particular hospital to:

(1) Appropriate members of the hospital medical staff;

(2) The chief administrative official of the hospital; and

(3) The Chairman of the Board of Trustees (or other governing body) of the hospital.

(e) *Confidentiality requirements.* In the development, analysis, or provision of profiles under this section, PSROs must comply with the confidentiality requirements of Section 1166 of the Act and applicable regulations.

§ 466.20 Involvement of health care practitioners other than physicians.

(a) *Basic requirement.* If the PSRO reviews care delivered by health care practitioners other than physicians, it must involve the peers of those practitioners in the review process unless:

(1) The PSRO has been unable to obtain a roster of peer practitioners available to perform review; or

(2) Those peers are precluded from performing review because of participation in the treatment of the patient or of financial interest in the hospital. (See § 466.21(d).)

(b) *Types of peer involvement.* The PSRO must provide that where health care is delivered by health care practitioners other than physicians:

(1) In decisions regarding medical necessity for their services, these practitioners are involved, for their particular specialty, in:

(i) Developing PSRO criteria and standards;

(ii) Selecting norms to be used;

(iii) Developing review mechanisms for care provided by their peers; and

(iv) Peer review of that care;

(2) In decisions regarding the quality of the services they provide, they:

(i) Develop PSRO criteria and standards;

(ii) Select norms to be used;

(iii) Develop review mechanisms for care provided by their peers; and

(iv) Conduct peer review of that care;

(3) In the conduct of concurrent review:

(i) An adverse determination of services rendered by a practitioner who has independent admitting privileges shall be made by a peer of that practitioner;

(ii) An adverse determination of services rendered by a practitioner who requires physician concurrence for hospital admission shall be made after consultation with a peer of that practitioner; and

(4) In the conduct of MCE studies, participation by these practitioners in review of care provided by their peers shall be similar to that of physicians.

§ 466.21 Reviewer qualifications and participation.

(a) *Staff privileges.* (1) Each person who makes a determination about health care services provided, or proposed to be provided, must have active staff privileges in at least one of the hospitals participating in the Medicaid, Medicare or Title V programs in the PSRO area.

(2) However, a person who does not have active staff privileges in at least one of the participating hospitals in the PSRO area may participate in MCE studies, criteria development, profile analysis, concurrent review, and preadmission review if the participation does not involve making a determination.

(b) *Peer review by physician.* (1) Each person who makes a determination about services provided, or proposed to be provided, by a licensed doctor of medicine or osteopathy must be another licensed doctor of medicine or osteopathy.

(2) For purposes of paragraph (b) of this section, individuals licensed to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall not be considered to be doctors of medicine or osteopathy.

(c) *Peer review by health care practitioners other than physicians.* A person who makes a determination about services provided, or proposed to be provided, by a health care practitioner other than a physician must be a peer health care practitioner except under the circumstances specified in § 466.20(a) (1) and (2).

(d) *Persons excluded from review.* A person may not participate in the review of health care services:

(1) If he issued treatment orders in the care of the patient;

(2) If he participated in the formulation or execution of the patient's treatment plan; or

(3) If he or a member of his family (spouse, child, grandchild, parent, or grandparent) has an ownership interest of 5 percent or more in the hospital.

(e) *Physician participation.* A PSRO must, to the maximum extent consistent with the effective and timely performance of its duties and functions:

(1) Encourage all physicians practicing in the area served by the PSRO to participate as reviewers;

(2) Provide rotating physician participation in review activities on an extensive and continuing basis;

(3) Assure that participation in review activities has the broadest representation feasible in terms of the types of physician practice in the area served by the PSRO; and

(4) Use, whenever appropriate, medical periodicals and similar publications to publicize the functions and activities of PSROs.

§ 466.22 Alternative review methods.

(a) *Prior approval.* A PSRO may use alternative methods for conducting concurrent review, preadmission review, and MCE studies in all or part of the PSRO area if its written plan explaining the methods is approved by HCFA.

(b) *Written plan.* The written plan must describe:

(1) The objectives of the alternative approach to review;

(2) In detail, the methods to be used, including the use of norms, criteria, and standards;

(3) The applicability of the plan to the PSRO area; and

(4) The extent of the PSRO's plan to use hospital review committees to conduct review for the PSRO.

(c) *Criteria for approval.* HCFA will approve those alternative review methods which:

(1) Are consistent with all provisions of Title XI of the Act; and

(2) Are, or have the potential to be, equal to or more efficient and effective than those specified under § 466.10 through § 466.14 and § 466.18.

Subpart C—Delegated Review

§ 466.30 Opportunity for hospitals to seek delegation.

(a) *Coordination procedures.* A PSRO shall develop coordination procedures and a model agreement for delegated hospitals and provide copies of the procedures and agreement to all hospitals in its area, (see § 463.6(b) of this chapter).

(b) *Notification to hospitals.* Prior to initiation of review in a particular hospital, the PSRO shall send that hospital a notification letter informing it of:

(1) The requirements and procedures for delegation of review functions; and

(2) The factors which the PSRO will consider in evaluating the hospital review committee's capability to perform review functions.

§ 466.31 Letter of interest.

A hospital that seeks to obtain delegation of review functions shall submit a letter of interest to the PSRO and a plan for carrying out delegated review functions, as specified in § 466.32. The letter must be signed by an authorized representative of the hospital medical staff and the hospital's chief administrative official, and must indicate:

(a) The specific functions for which the hospital seeks delegation; and

(b) The hospital's willingness to accept PSRO evaluation and monitoring of its review activities.

§ 466.32 Details of delegated review plan.

The delegated review plan must include:

(a) A description of the manner in which the hospital will organize itself to conduct the delegated review activities and those activities supportive of delegated review. This must include direction of the delegated review by a hospital review committee, composed of one or more physicians having active staff privileges in the hospital. The committee may include health care practitioners other than physicians;

(b) A description of the proposed operation of the delegated review, including:

(1) The number and types of hospital personnel for each type of review;

(2) The methods of providing for selection, training, and reimbursement of review personnel;

(3) The methods of involving health care practitioners other than physicians in review functions;

(4) A description of the proposed use of norms, criteria, and standards in review;

(5) The methods by which review findings will lead to continuing education activities and administrative change; and

(6) The activities the hospital review committee expects the PSRO to perform for those review functions not delegated;

(c) A description of the coordination procedures developed with Medicare, Medicaid, and Title V claims payment agencies, including the mechanisms for notifying these agencies of delegated review determinations that impact on claims payment;

(d) The methods of providing data collection, data flow, and information release to satisfy PSRO profile and reporting requirements, including a description of the current and proposed relationships of the hospital with processors of hospital discharge abstract data;

(e) The number of physicians on the hospital's medical staff who are eligible for PSRO membership, as defined in applicable regulations regarding grants to PSROs, and the number who actually are members;

(f) Specific information about the hospital's existing review system, if any, including narrative material concerning operating procedures, results, and follow-up; and

(g) Hospital characteristics data on:

(1) Number of beds;

(2) Total admissions each year;

(3) Federal program patient admissions each year;

(4) Type of ownership;

(5) Teaching affiliations; and

(6) Size and specializations of medical staff.

§ 466.33 Determination and notice of hospital capability.

(a) *Timeframes for determination.* A PSRO must make a determination of hospital capability to perform review activities within 90 days from the date of receipt of the delegated review plan.

(b) *Basis for determination.* In making a determination of capability, the PSRO must use written evaluation factors which have been approved by HCFA. These evaluation factors must measure the capability of the hospital review committee to perform review activities effectively and efficiently. They must include at least:

(1) The degree to which the proposed organization for review and review mechanisms provides the capability to meet the objectives of the PSRO's approved formal plan;

(2) The adequacy of the hospital's performance in Medicare and Medicaid utilization review activities. In evaluating this factor the PSRO shall consider information;

(i) Obtained from the Medicare State survey agency, the appropriate Medicare intermediaries, and the Medicaid State agency; and

(ii) Obtained through site visits to the hospital;

(3) The degree to which the delegation of one or more functions to the hospital would increase the effectiveness and efficiency of review throughout the PSRO area;

(4) Membership in the PSRO of at least 25 percent of those physicians with active staff privileges who are eligible to be PSRO members; and

(5) The capacity to provide the PSRO with the data it requires for monitoring the hospital review activities and for generation of profiles and reports.

(c) *Evaluation committee.* (1) The determination must be made by an evaluation committee, designated by the governing body of the PSRO, and composed of two or more PSRO members.

(2) A PSRO member may not participate in the determination of capability of a hospital in which:

(i) He or a member of his family (spouse, child, grandchild, parent, or grandparent) has an ownership interest of 5 percent or more; or

(ii) He has active staff privileges, as defined in § 466.2, unless there are no alternate physicians to serve on the evaluation committee.

(d) *Notice of determination.* A PSRO must promptly provide to the hospital a written notice that includes:

(1) The reasons for the determination; and

(2) An explanation of the hospital's right to obtain a reconsideration by the PSRO.

(e) *Record of determination.* A PSRO must maintain a record of each decision and the information which formed the basis for the determination on capability.

(f) *Reconsideration of determination.* Any hospital dissatisfied with a PSRO determination of capability may request a PSRO reconsideration of that determination. (See § 466.37).

§ 466.34 Delegation of review activities.

If a PSRO has determined that a hospital is capable of performing review activities, the PSRO may:

(a) Delegate reponsibility for any one, or all, of the following review activities: preadmission review; concurrent review; alternative review activities (when HCFA has approved those activities); and MCE studies; and

(b) Authorize the hospital to perform modified review.

§ 466.35 Agreement with delegated hospitals.

(a) *Basic requirement.* If the PSRO has made a determination to delegate the performance of review functions to a hospital, the two parties shall enter into a written agreement:

(1) Based upon the PSRO's model agreement; and

(2) Incorporating jointly developed administrative and review procedures. (See § 463.6 of this subchapter.)

(b) *Content of agreement.* The agreement must set forth:

(1) The specific review functions to be performed by the hospital under delegation;

(2) The specific review functions that will not be delegated and will be performed by the PSRO;

(3) The hospital's commitment to perform the delegated functions in accordance with:

(i) The requirements placed upon PSROs under the Act;

(ii) The PSRO's formal plan; and

(iii) The review plan submitted by the hospital;

(4) A schedule for phasing in each function;

(5) The norms, criteria, and standards the hospital will use;

(6) Methods of involving the hospital in the PSRO plan for reconsiderations and appeals;

(7) Methods for PSRO monitoring of delegated review functions, including inspection of the operation and records of the hospital:

(8) Methods for the PSRO to report profiles, results of MCE studies, and other pertinent information to the hospital;

(9) Procedures for reassessing the hospital; (see § 466.36);

(10) Procedures for the resolution of disputes between the hospital and the PSRO;

(11) Procedures for the termination of the agreement:

(i) By the PSRO upon reassessment; or

(ii) By the hospital, upon 90 days notice to the PSRO; or

(iii) By HCFA;

(12) The methods for involving health care practitioners other than physicians in review functions; and

(13) Provisions for modification of the agreement with the approval of both parties.

(c) *Signatures.* The agreement shall be signed by:

(1) The chief administrative official of the PSRO;

(2) An authorized representative of the hospital's medical staff;

(3) The chief administrative official of the hospital; and

(4) The Chairman of the Board of Trustees (or other governing body) of the hospital.

(d) *Public inspection.* Each signed agreement shall be retained at the principal office of the PSRO for public inspection during regular business hours.

§ 466.36 PSRO monitoring and reassessment of hospital capability.

(a) A PSRO must monitor and reassess each hospital review committee's performance of review function through:

(1) Analysis of profiles;

(2) Information provided by the hospital; and

(3) On-site inspections.

(b) The purpose of monitoring and reassessment shall be to determine whether:

(1) The review committee is complying with the agreement;

(2) The review is meeting objectives in a cost-effective and timely manner; and

(3) The review committee is performing review in a timely manner.

(c) *Notification of withdrawal of delegation.* If a PSRO determines that a hospital is not performing delegated review effectively, it must:

(1) Notify the hospital and HCFA; and

(2) Reassume review responsibility as specified in § 466.39.

§ 466.37 Reconsiderations.

(a) *Request for reconsideration.* A hospital dissatisfied with a PSRO determination of capability may request a reconsideration, in writing, within 60 days from the date on the PSRO's notice of determination. For good cause shown by the hospital, the PSRO may extend the filing time.

(b) *Reconsideration committee.* The governing body of the PSRO shall designate a committee of two or more PSRO members to conduct the reconsideration. The committee may not include any PSRO member who would be disqualified under § 466.33(c).

(c) *Reconsideration procedures.* The reconsideration committee must promptly give the hospital an opportunity to submit additional written or oral information. Reconsideration proceedings may be informal and need not be conducted in accordance with formal rules of evidence.

(d) *PSRO determination.* The PSRO may affirm, modify, or reverse the initial determination of capability, based on the information reviewed during the reconsideration proceedings. It must give the hospital prompt written notice of its decision, including a statement of the reasons for the decision.

(e) *PSRO records.* The PSRO must maintain a record of:

(1) The decision;

(2) The information which formed the basis for it; and

(3) A summary of the reconsideration proceedings.

§ 466.38 Monitoring by HCFA.

(a) *PSRO reports.* PSROs must periodically submit to HCFA reports indicating:

(1) Those hospitals that have been delegated the performance of review functions and the manner in which they are performing; and

(2) Those hospitals that have been denied delegated review.

(b) *HCFA review.* PSRO decisions on delegations of review functions may be reviewed by HCFA.

(c) *Disapproval by HCFA.* HCFA may disapprove a delegation for good cause, after taking into consideration any comments submitted by Medicare fiscal agents or State Medicaid or Title V agencies regarding:

(1) The appropriateness of delegation of review to a hospital; or

(2) The effectiveness of performance of delegated review functions by that hospital.

(d) *"Good cause."* For purposes of this section, "good cause" for disapproval of delegation must include:

(1) A PSRO determination of capability which does not comply substantially with the procedures of this part;

(2) The hospital's substantial noncompliance with the agreement specified in § 466.35, or the provisions of this part; and

(3) The hospital's failure to perform delegated review functions effectively and efficiently.

(e) *Notification.* If HCFA disapproves a delegation of review functions in accordance with paragraphs (c) and (d) of this section, it will give written notice to the PSRO and the hospital at least 30 days before the effective date of disapproval, specifying the reasons for disapproval.

(f) *Opportunity for hospital to respond.* The PSRO and the hospital will have opportunity, prior to the effective date, to file a written statement with HCFA, explaining why the disapproval should not become effective.

(g) *Final decision.* (1) If HCFA determines, from additional information submitted under paragraph (f) of this section, that "good cause" for disapproval does not exist, it will withdraw the notice of disapproval.

(2) If no statements are submitted (or if the statements are not persuasive) the disapproval will become final on the effective date specified in the notice.

(3) When a disapproval becomes final, the PSRO shall resume review activities in accordance with § 466.39.

§ 466.39 PSRO responsibilities when delegation is denied, withdrawn, or disapproved.

(a) A PSRO shall, within a reasonable time, initiate or resume review activities in any hospital:

(1) That did not request a delegation;

(2) Whose request for delegation was denied;

(3) Whose delegation is withdrawn by the PSRO; or

(4) Whose delegation is disapproved or withdrawn by HCFA.

(b) If a hospital whose delegation was denied, withdrawn, or disapproved submits a new letter of interest and delegated review plan, the PSRO must make a determination of capability within one year from date of receipt of the plan.

Subpart D—Norms, Criteria, and Standards for Review

§ 466.50 Basic requirement for PSRO area norms, criteria, and standards.

As a condition for designation as a PSRO, a PSRO must include in its formal written plan, in accordance with § 463.2 of this subchapter, the organizational structure and procedures which it will use to establish, disseminate, use, and revise norms, criteria, and standards.

§ 466.51 Establishment of norms, criteria, and standards.

(a) *Area norms, criteria, and standards.* For the conduct of review a PSRO must:

(1) Establish written norms, criteria, and standards which are required for preadmission and concurrent review, alternative concurrent review methods, and profile analysis; and

(2) Establish written criteria and standards to be used as principal points of reference in conducting MCE studies.

(b) *Variant norms, criteria, and standards.* A PSRO may establish different norms, criteria, and standards for use in preadmission and concurrent review to be applicable to certain locations and hospitals in the PSRO area if the PSRO determines that:

(1) The patterns of practice in those locations and hospitals are substantially different from patterns in the remainder of the PSRO area; and

(2) There is a reasonable basis for the difference which makes the variation appropriate.

(c) *Technical assistance.* A PSRO can request technical assistance from the National Council and HCFA in using applicable regional norms, criteria, and standards in establishing norms, criteria, and standards for its area.

§ 466.52 Dissemination of norms, criteria, and standards.

(a) *Provision to hospitals.* A PSRO must provide to each hospital in its area a copy of the norms, criteria, and standards to be used in preadmission and concurrent review, or in an alternative review method.

(b) *Notice to public.* A PSRO must publish in local medical periodicals and in one newspaper of general circulation in its area a notice stating that the norms, criteria, and standards currently used are available for public inspection at the PSRO's principal office.

§ 466.53 Use of norms, criteria, and standards.

(a) *Norms and criteria applied in preadmission and concurrent review.* In assessing the need for, and appropriateness of, inpatient hospital care, a PSRO must, as principal points of reference:

(1) Apply criteria specifying clinical indications of:

(i) The necessity for hospital admission and continued stay;

(ii) The necessity for surgery and other major diagnostic and therapeutic procedures;

(iii) The appropriate nature of a preadmission work-up; or

(iv) The types of services which are most effectively, economically, and appropriately provided at a hospital level of care;

(2) Apply length-of-stay projections or norms in assigning initial and extended certified length-of-stay periods;

(3) Identify diagnoses, conditions, clinical areas or procedures which, on the basis of past experience and data, justify automatic certification of admission;

(4) Identify diagnoses, problems, and conditions of such nature that their presence, or suspicion of their presence, justifies automatic certification of admission; and

(5) Apply length-of-stay norms to specify the time when attending physician or other health care practitioner certications are required.

(b) *Norms and criteria applied in alternative review methods.* If HCFA has approved an alternative review method, a PSRO must apply, as principal point of reference, norms and criteria specified in the approved alternative review plan.

(c) *Application of norms and criteria by delegated hospitals.* All delegated hospitals must apply the norms, criteria, and standards established by the PSRO in the same manner as required of the PSRO under this subpart.

§ 466.54 Revisons.

The PSRO must periodically reassess, revise and update the norms, criteria, and standards currently applied in preadmission and concurrent review, or in an alternative review method.

§ 466.55 Regional norms, criteria, and standards.

(a) *National Council role.* The National Council must provide for the appropriate distribution of regional norms, criteria, and standards to the PSROs to be used by those PSROs as principal points of reference in their establishment of area norms, criteria, and standards.

(b) *Notice of distribution and availability.* HCFA will, within 30 days from the date of each such distribution, publish a notice in the **Federal Register** stating:

(1) That the distribution has been made by the National Council; and

(2) That the material will be open to inspection and copying by members of the public.

§ 466.56 Review of PSRO norms, criteria, and standards.

(a) *Review of significant differences from regional norms, criteria, and standards.* (1) *Submission by the PSRO.* (i) As soon as a PSRO has established norms, criteria, and standards for use in preadmission or concurrent review, or in an alternative concurrent review method, it must forward them to HCFA.

(ii) As revisions are made, a PSRO must forward them to HCFA.

(2) *HCFA review.* (i) HCFA will review the norms, criteria, and standards and identify any significant variations from the regional norms, criteria, and standards distributed by the National Council.

(ii) If HCFA identifies significant variations, it will notify the PSRO and the National Council.

(3) *National Council action.* (i) The National Council must, after appropriate consultation with the PSRO, approve or disapprove the variant norms, criteria, and standards.

(ii) The National Council will base its decision on whether a reasonable justification exists for the use of the variant norms, criteria, and standards.

(4) *PSRO action following National Council decision.* If the National Council disapproves the variant norms, criteria, or standards, the PSRO must modify and resubmit them for review by HCFA, and if appropriate, by the National Council.

(b) *Submission of other norms, criteria, and standards.* The PSRO must submit to HCFA, upon request:

(1) Criteria and standards it uses in individual MCE studies; and

(2) Norms, criteria, and standards it uses in profile analyses.

(Secs. 1102, 1155, 1156, and 1165 of the Social Security Act; 42 U.S.C. 1302, 1320c–(4), 1320c–5, and 1320c–14.)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.773, Medicare—Hospital Insurance.)

Dated: March 5, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: May 18, 1979.

Joseph A. Califano, Jr.,

Secretary.

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Monday
June 4, 1979

Part III

Department of Transportation

Federal Aviation Administration

Proposed Policies and Procedures for Considering Environmental Impacts

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policies and Procedures for Considering Enivronmental Impacts: Draft Order 1050.1C

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policies and procedures.

SUMMARY: This notice publishes for public review and comment the draft FAA Order 1050.1C, entitled "Policies and Procedures for Considering Environmental Impacts." When issued, the order will supersede Order 1050.1B, dated June 16, 1977. The draft order was prepared in response to regulations promulgated by the Council on Environmental Quality setting uniform policies and procedures for considering the environmental impacts of Federal actions. The FAA notes that the current Order 1050.1B is referenced, or incorporated by reference, in various provisions of the Federal Aviation Regulations (14 CFR Chapter I) and, thus, has regulatory significance. When the revised Order 1050.1C is issued, references to it will be substituted by amendments to the affected provisions.

DATES: Comments must be received on or before: July 5, 1979. The CEQ regulations become effective on July 30, 1979.

ADDRESSES: Send comments on the draft order in duplicate to: Federal Aviation Administration, Office of Environment and Energy, Attn: Order 1050.1C Docket, 800 Independence Avenue, SW., Washington, D.C. 20591

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Tedrick, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755–9027.

SUPPLEMENTARY INFORMATION: On November 29, 1978, the Council on Enivronmental Quality (CEQ) published its final regulations establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act" (43 FR 55978). "The principal aims of those regulations are" * * * to reduce paperwork, to reduce delays, and to produce better decisions." Under Part 1507 of the CEQ regulations, Federal agencies must adopt any necessary implementing procedures after publishing them for public comment and submitting them to CEQ for review. This notice is issued in accordance with that requirement.

Draft Order 1050.1C was prepared in response to the CEQ regulations to amend FAA's policies and procedures for intergrating national environmental objectives into current agency policies and decisionmaking process. The draft order provides in a single, comprehensive document the essential treatment of the environmental assessment process for the broad range of FAA programs and projects. While all comments on the draft order are invited, the FAA specifically invites comments concerning its length, its depth of detail, and its value and usefulness to interested persons because of its comprehensive coverage of FAA activities. The FAA is considering the alternative of issuing shorter generalized order in conjunction with a handbook containing detailed procedural direction. Public comment is invited on that concept, its application, and its usefulness to the agency and persons outside of the FAA.

In that connection, the FAA notes that Appendix 6 of the draft order, like the current order, is a self-contained unit prescribing requirements for preparing environmental documents in conjunction with certain Federal actions associated with airport development and great programs. Sponsors submitting applications for airport development aid are currently required by § 152.23(a)(6) of the Federal Aviation Regulations to submit with their applications an environmental impact assessment that meets the requirements of Appendix 6. Similarly, public agencies applying for a conveyance of a property interest owned or controlled by the United States are required by § 154.7(b)(14) to submit an environmental impact assessment that conforms to that appendix. Appendix 6 is incorporated by reference into both of these parts.

When new Order 1050.1C is issued, §§ 152.23(a)(6) and 154.7(b)(14) will be updated to reference this revised order. In addition, Part 155, Release of Airport Property from Surplus Property Disposal Restrictions, will be amended to incorporate the requirement in Appendx 6 for the submission of an environmental impact assessment by persons applying for release from a restriction on property conveyed to a public agency for public airport purposes by the Federal Government.

Accordingly, the Federal Aviation Administration publishes for public review and comment the following Draft Order 1050.1C, entitled "Policies and Procedures for Considering Environmental Impacts."

National Environmental Policy Act of 1969 as amended (42 U.S.C. §§ 4321 et. seq.); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 et. seq.); Section 309, Clean Air Act, as amended (42 U.S.C. § 7609); Sec. 4(f), Department of Transportation Act of 1966, as amended (49 U.S.C. § 1653(f); Executive Order 11514, dated March 4, 1970, as amended by Executive Order 11991, dated May 24, 1977; 40 CFR Parts 1500–1508; DOT Order 5610.1B (39 FR 35234; September 30, 1974).

Issued in Washington, D.C. on May 25, 1979.

Richard N. Tedrick,

Acting Director of Environment and Energy.

Department of Transportation

Federal Aviation Administration, Order 1050.1C (Draft)

Policies and Procedures for Considering Environmental Impacts—May 25, 1979

Table of Contents

Chapter 1. General

Section 1. Application and Implementation

1. Policy.
2. Purpose.
3. Applicability.
4. Class Action or Program Statements.
5. Categorical Exclusions.
6. Responsibility for Implementation.
7. Changes to this Directive.
8. Incorporation of CEQ Rule.
9.–99. Reserved.

Section 2. Commonality with Other Actions

100. Definitions Applicable to this Order.
101. Incorporations by Reference.
102. Prior Action Affirmations.
103. Tiering.
104. Reducing Paperwork.
105. Reducing Delay.
106.–199. Reserved.

Chapter 2. Preliminary Considerations and Procedures

Section 1. Preliminary Environmental Review

200. Planning and Development Stage.
201. Initial Review.
202. Identification of Issues and Problems.
203. Early Coordination.
204. Budgetary Requirements.
205. Research.
206. Use of Contractors.
207. Role of Lead and Cooperating Agencies.
208. Cumulative Impact.
209. Reserved.

Section 2. Preliminary Consultation Procedures

210. Consultation.
211. Cooperating Agencies.
212. A–95 Review.
213. Public Hearings.
214. Citizen Involvement.
215. Scoping.
216.–299. Reserved.

Chapter 3. Environmental Impact Statements and Findings

Section 1. Determination Whether an Action is a Major Federal Action Significantly Affecting the Quality of the Human Environment

300. Environmental Assessment.
301. Actions Requiring Environmental Impact Statements.
302. Time and Length Limits.
303.–304. Reserved.

Section 2. Preparation of Draft Environmental Impact Statements of Findings of No Significant Impact

305. Timing of Draft Statement Preparation.
306. Applications.
307. Use of Consultants.
308. Scoping.
309. Inclusion of Environmental Determinations.
310. Interdisciplinary Approach.
311. Internal Review Process.
312. Regulations.
313. Legislative Proposals.
314. Reserved.
315. Advisory Actions.
316.–319. Reserved.

Section 3. Processing of Draft Environmental Impact Statements

320. General.
321. Public Notice.
322. Copies.
323. Circulation and Availability of DEIS.
324. Comments on the DEIS.
325. Comment Periods.
326.–329. Reserved.

Section 4. Findings of No Significant Impact

330. General
331. Format.
332. Scope of Documentation.
333. Responsible Officials.
334. Coordination.
335. Approval Format.
336. Distribution.
337. Availability for Public Information.
338.–339. Reserved.

Section 5. Environmental Impact Statements

340. Format.
341. Cover Sheet.
342. Summary.
343. Timing.
344. Index and Appendices.

Section 6. content of Environmental Impact Statements

345. General.
346. Need for and Purpose of Action.
347. Background Information.
348. Probable Impacts on the Affected Environment.
349. Noise.
350. Air Quality.
351. Water Quality.
352. Social Impacts.
353. Induced Socio-Economic Impacts.
354. DOT Section 4(f)
355. Historical and Archaeological Sites.
356. Floodplain Management.
357. Considerations Relating to Wetlands
358. Coastal Zone Management Programs.
359. Energy Consumption and Conservation.
360. Construction Impacts.
361. Wildlife and Waterfowl.
362. Impacts Relating to Endangered and Threatened Species of Fauna and Flora.
363. Light Emissions.
364. Visual Impacts.
365. Solid Waste Impacts.
366. Unique and Prime Farmlands.
367. Environmental Consequences.
368. Actions to Minimize Unavoidable Adverse Effects.
369. Alternatives.
370. Relationship Between Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity.
371. Irreversible and Irretrievable Commitments of Resources.
372. Citizen Involvement.
373. List of Preparers
374. Affected Environment.

Section 7. Preparation, Approval and Distribution of Final Environmental Impact Statement

375. Utilization of Comments.
376. Approval of Final Environmental Impact Statements.
377. DOT Concurrence.
378. Decisions Reserved to the Secretary.
379. Availability Pending Approval.
380. Distribution of Approved Environmental Impact Statements.
381. Referrals to CEO.
382.–389. Reserved.

Section 8 Supplemental Actions

390. Supplemental or Amended Statements.
391. Implementation of Commitments in Environmental Statements.
392. Limit on Actions.
393. Record of Decision.
394. Public Record.
395. Use of Information.
396.–399. Reserved.

Chapter 4. Additional Provisions

400. Review of Environmental Statements Prepared by Other Agencies.
401. Quarterly Lists of Environmental Information.
402. Emergency Action Procedures.
403. Application of Section 102(2)(C) Procedure to Existing Projects and Programs.
404. Land Acquisition and Construction of Facilities.
405. Environmental Assessments of Findings of No Significant Impact on Requests from Foreign Sources.
406.499. Reserved.

Appendix 1. Systems Research and Development.
Appendix 2. Airway Facilities.
Appendix 3. Air Traffic.
Appendix 4. Flight Standards.
Appendix 5. Logistics.
Appendix 6. Airport Development.
Appendix 7. Environment and Energy.

Chapter 1. General

Section 1. Application and Implementation

1. *Policy.* FAA will comply with both the procedures and the policies of the National Environmental Policy Act of 1969 (hereafter NEPA) and related orders, statutes, and regulations.

a. *FAA policy is* to integrate national environmental objectives into existing agency policies and missions and to:

(1) Avoid or minimize adverse environmental effects wherever possible by considering project alternatives or measures to mitigate adverse impacts;

(2) Restore or enhance environmental quality to the fullest extent practicable;

(3) Make a special effort to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and historic sites;

(4) Preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's wetlands and coastal zones;

(5) Promote an improved environment, regarding the impact of aviation noise and exhaust emissions on the quality of human life;

(6) Consult with and inform individuals and groups who are affected by or known to have an interest in an action, who can speak knowledgeably on the impacts of proposed actions;

(7) Develop programs and activities in cooperation with other Federal agencies, state and local governments, and Indian Tribal Governing bodies when appropriate.

b. *FAA's environmental assessment and consultation process:*

(1) Provides officials and other decisionmakers, as well as the public, with an understanding of the potential environmental effects of proposed actions; and

(2) Assures that decisionmaking includes environmental assessments along with economic, technical, and other factors.

c. *Environmental impact statements* (hereafter EIS) and findings of no significant impact (hereafter FONSI) serve to:

(1) Document and record compliance with these policies and procedures; and

(2) Reflect a thorough review of all relevant environmental factors, utilizing a systematic, interdisciplinary approach.

d. *These policies* are supplementary to other agency policies established under other statutes and directives.

2. *Purpose.* This order implements agency actions required by the statutes and directives (as amended) cited in subparagraphs a. through w.

a. *The NEPA of 1969* (P.L. 91–190) 42 U.S.C. 4321 establishes a broad national policy to improve the relationship between humans and their environment, and provides for the creation of a Council on Environmental Quality (hereafter CEQ). NEPA sets out certain policies and goals to ensure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government.

b. The Clean Air Act as amended by Chapter 309 (P.L. 91–604) December 31, 1970, Chapter 7609, Policy Review, provides that the Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter.

c. *Executive Order 11514,* as amended by Executive Order 11991 (Sections 2(g) and 3(h)) May 24, 1977, Protection and Enhancement of Environmental Quality, dated March 4, 1970, orders all Federal agencies to "initiate measures needed to direct their policies, plans, and programs so as to meet national environmental goals."

d. *40 CFR Parts 1500–1508 (43 FR 230, November 29, 1978)* CEQ Implementation of NEPA Procedural Provisions establishes uniform procedures, terminology, and standards for performing environmental assessments and integrating them into the Federal decisionmaking process.

e. *Order DOT 5610.1B, Procedures for Considering Environmental Impacts,* September 30, 1974, provides guidelines for considering environmental impacts of transportation actions.

f. *Section 4(f) of the Department of Transportation Act of 1966* (P.L. 89–670 as amended by P.L. 90–495 hereafter, Section 4(f)) 49 U.S.C. 1653 states, "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside, public parks and recreational lands, wildlife and waterfowl refuges, and historic sites. The Secretary * * * shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

g. *The Airport and Airway Development Act of 1970* (P.L. 91–258), as amended hereafter the Airport Act) 49 U.S.C. 1701 establishes an airport development grant program. This Act provides that an airport development project may not be approved unless the Secretary is satisfied that the project is reasonably consistent with plans (existing at the time of approval of the project) of planning agencies for development of the area in which the airport is located. In so doing, it requires consideration of the interest of communities in or near which airport development projects are proposed. The Airport Act also directs that each airport development project "provide for the protection and enhancement of the natural resources and the quality of environment of the Nation"; and provides that the Secretary may not authorize a project involving airport location, major runway extension, or runway location found to have an adverse effect unless he finds, in writing, after full and complete review, that "no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect."

The Airport Act requires, as a condition for approval of certain airport projects, that an opportunity be afforded for a public hearing for consideration of economic, social, and environmental effects; and that assurances be obtained that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. Assurances must be obtained that "appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft."

h. *The Noise Control Act of 1972* (P.L. 92–574) 42 U.S.C. 4901 (as amended by S. 3083) provides for Environmental Protection Agency (EPA) consultation on noise standards and also permits EPA to propose aviation noise regulations to the FAA.

i. *Section 106 of the National Historic Preservation Act of 1966* (Pub. L. 89–665 hereafter, the Historic Preservation Act) 16 U.S.C. 470f requires the head of any Federal agency having jurisdiction over a Federal or Federally-assisted undertaking to take into account, prior to approving the undertaking, its effect on any district, site, building, structure, or object that is included in the National Register of Historic Places, and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

j. *Executive Order 11593, Protection and Enhancement of the Cultural Environment,* requires that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, or archaeological significance.

k. *36 CFR Part 800 (39 FR 3365, January 25, 1974) Procedures for the Protection of Historic and Cultural Properties,* establishes procedures to ensure that historic and cultural resources are given proper consideration in the preparation of environmental impact statements.

l. *The Archaeological and Historic Data Preservation Act of 1974* 16 U.S.C. 469 is directed to the preservation of historic and archaeological data that would otherwise be lost as a result of Federal construction or other Federally licensed or funded activities. Agencies may request the Secretary of the Interior to undertake the recovery, protection, and preservation of such data, including preliminary survey or other investigation as needed, analysis, and publication; or the agency may undertake the activity itself. Up to one percent of funds authorized to be appropriated for a project may be expended on the recovery, protection, and preservation of such data.

m. *The Coastal Zone Management Act of 1972* (Pub. L. 90–583) 43 U.S.C. 1241 states that "it is national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone . . ." (Section 303); and requires all Federal or Federally supported activities affecting the zone to be carried out in a manner consistent with State coastal zone management programs (Section 307). 15 CFR Part 930, *Federal Consistency With Approved Coastal Management Programs,* establishes procedures for determining consistency.

n. *Section 2 of the Water Bank Act* (Pub. L. 91–559) 16 U.S.C. 1301 declares that ". . . it is in the public interest to preserve, restore, and improve the wetlands of the Nation . . ."

o. *Section 2 of the Fish and Wildlife Coordination Act* (Pub. L. 85–624) 16 U.S.C. 661 requires, with certain limited exceptions, that "whenever the waters of any stream or other body of water are proposed or authorized to be . . . impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified

for any purpose whatever . . . by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the . . . control facility is to be constructed . . ." (Subsection (2)). Reports and recommendations of the Secretary of the Interior and any other applicable officials must be included in the report prepared or submitted by the agency responsible for constructing the project to the Congress or other agency having authority to approve the project (Subsection (b)).

p. *Protection of Wetlands, Executive Order 11990 and Preservation of the Nation's Wetlands, Order DOT 5660.1,* of June 21, 1975, provide information on the definition and significance of wetlands, and require action to minimize the destruction, loss, or degradation of wetlands and to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, and operation of transportation facilities and projects.

q. *The Endangered Species Act of 1973* (Pub. L. 93–205) 16 U.S.C. 1531 and 50 CFR Part 402, *Interagency Cooperation Regulation* require that all Federal agencies shall, in consultation with the Secretaries of Interior and Commerce, carry out programs for the conservation of endangered or threatened species listed by the Department of the Interior and insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of the endangered species or result in the destruction or modification of the habitat of such species to an extent which is determined by the Secretary (of the Interior or Commerce) to be critical.

r. *Executive Order 11988, Floodplain Management* 43 FR 6030, links the need to protect lives and property with the need to restore and preserve natural and beneficial floodplain values. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a floodplain.

s. *Notice DOT N 5610.4, Implementation of Decision to Address Environmental Design Considerations in Environmental Impact Statements of February 27, 1978,* requires consideration of design, art, and architecture to be documented in EISs and FONSIs, where relevant, and circulated to State and local art councils and other pertinent organizations.

t. *Section 201(a) of the Federal Land Policy and Management Act of 1976* (Pub. L. 94–579) 43 U.S.C. 1701 requires the Secretary of Interior to inventory land having wilderness characteristics and to review this inventory for its suitability for preservation as wilderness land. Section 603(c) requires that during the period of review, the Secretary must continue to manage such lands so as not to impair the suitability of such areas for preservation as wilderness lands. Federal agencies shall consult the Bureau of Land Management to determine if land to be used for a Federal action is land which is being considered for inclusion in the National Wilderness System.

u. *The General Bridge Act of 1946* (Pub. L. 79–601) 33 U.S.C. 525 et seq, as amended by the *Department of Transportation Act of 1966* (Pub. L. 89–670), 49 U.S.C. 1655(q)(6)(C) requires U.S. Coast Guard approval for actions involving the construction or alteration of bridges over navigable waters.

v. *7 CFR Part 657 (42 FR 4030, January 31, 1978), Prime and Unique Farmlands* requires the responsible official to consult the U.S. Department of Agriculture's Land Use Committee to determine whether land to be affected by agency action is prime and unique farmland.

w. *Section 404 of the Federal Water Pollution Control Act Amendments for 1972* (Pub. L. 92–500) 33 U.S.C. 1344 as amended by the Clean Water Act of 1977 (Pub. L. 95–217) 33 U.S.C. 1251 establishes a permit procedure for activities involving dredging and filling of navigable waters. The Secretary of the Army, acting through the Army Corps of Engineers, is responsible for issuing such permits.

3. *Applicability.* The requirements in this order apply to, but are not limited to, the following: all grants, loans, contracts, leases, construction, research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the agency by State or local agencies which require FAA approval, and legislation proposed by FAA. Exceptions to these requirements are listed in paragraph 5.

4. *Class Action or Program Statements.* A general class of actions or a program may be covered by a single EIS or FONSI when the environmental impacts of all actions in the class or program alternatives thereto, and measures to mitigate adverse environmental impacts, are substantially similar.

5. *Categorical Exclusions.*

a. *Categorical Exclusions from the Requirement for an EIS or FONSI:* (1) Assistance in the form of general revenue sharing with no FAA control over the subsequent use of the funds;

(2) Administrative and operating procurements (e.g., general supplies and replacement parts and equipment including contracts for professional services);

(3) Personnel actions (e.g., promotions, hirings);

(4) Planning grants which do not imply a project commitment;

(5) Project amendments (e.g., increases in costs) which do not alter the environmental impact of the action;

(6) Legislative proposals not originating in FAA;

(7) Policy and planning documents not intended for or which do not cause direct implementation of project or system actions;

(8) Agreements with foreign Governments, international organizations, or U.S. Government departments calling for the provision of technical assistance, advice or services in foreign countries;

(9) Organizational changes within the FAA;

(10) Emergency measures regarding the air or ground safety;

(11) The development and implementation of job related training programs;

(12) The planning and development of projects and programs leading to Aeromedical Applications and Standards; personnel efficiency and performance;

(13) The approval or issuance of certificates covering medicals, airmen, delegated authority, ground schools; out-of-agency training; and aircraft repair-maintenance not affecting noise, emissions, or wastes;

(14) In addition to the exceptions noted above, each of the Service Appendices may provide for categorical exclusions of specific types of projects or categories of actions carried out by that Service, providing that these excepted actions are not major Federal actions significantly affecting the quality of the human environment.

b. *Documentation.* Categorical exclusions from this order or actions for which class EISs or FONSIs have been filed do not require further documentation.

c. *An action* which has been categorically excluded in this order or for which a class EIS or FONSI has been filed, but which in a particular case is highly controversial on environmental grounds or which significantly affects

the quality of the human environment requires the preparation of an EIS.

6. *Responsibility for Implementation.* Agency officials are responsible for implementing this order as follows:

a. *Compliance* with the policies and procedures of this order is the responsibility of the:

(1) Regional directors for all actions originating in the regions;

(2) Heads of offices and services for all actions originating at headquarters; and

(3) Center directors for all actions originating at centers.

b. *Heads of Offices and Services* are responsible, in addition, for:

(1) Revising their appendices of this order, as appropriate;

(2) Providing supplemental guidelines for implementing this order in their program areas, as appropriate; and

(3) Consulting with and advising responsible officials on matters within their operational areas.

c. *Regional Directors* are responsible, in addition, for developing programs for:

(1) Assigning personnel and other resources necessary to assess and document all relevant environmental factors;

(2) Preparing and filing EISs and FONSIs as appropriate; and

(3) Assuring appropriate internal coordination of actions that cross program lines.

d. *Office of Environment and Energy* (hereafter AEE is responsible for:

(1) Overall review of FAA's environmental policies and procedures including NEPA compliance;

(2) Developing and coordinating policies and procedures under this order;

(3) Assisting services in developing guidance for their program areas;

(4) Consulting with and advising responsible officials in their implementation of this order; and

(5) Developing training programs in cooperation with the Office of Personnel and Training and the services.

e. *The Chief Counsel* and regional and center counsels provide legal counsel to all elements of FAA regarding the legal sufficiency of environmental documents.

f. *Other responsibilities* regarding specific program areas are set forth in Appendices 1–7 of this Order.

7. *Changes to this Directive.* The Director of Environment and Energy (AEE) may issue changes to chapters 1 through 4 of this order after coordinating the change with the concerned organizational elements, and each office and service may issue changes to the appropriate appendix (i.e., Air Traffic Service for Appendix 3) after coordinating the change with the concerned organizational elements, including AEE and AGC, provided:

a. The change does not affect policy, delegations of authority, or assignment of responsibilities outside the office or service's authority;

b. The Administrator has not specifically reserved authority to make the change; and

c. Substantial changes are not made without the concurrence of the Office of the Assistant Secretary for Policy and International Affairs (hereafter P) and the Office of the General Counsel (hereafter C) and are published for comment in the **Federal Register** after consultation with CEQ.

8. *Incorporation of CEQ Regulations.* The uniform procedures, terminology, and standards adopted by the CEQ for implementation of the procedural provisions of NEPA (40 CFR Parts 1500–1508; 43 FR 230, November 29, 1978) are herewith incorporated by reference. This Order furnishes additional material as explanatory guidance and as an aid to implement these regulations. (Hereinafter, references to the CEQ Regulations shall simply identify the paragraph; e.g. CEQ 1508.1)

9.–199. *Reserved.*

Section 2. Commonality With Other Actions

100. *Definitions Applicable to this Order.*

a. *Council on Environmental Quality (CEQ) Terminology.* CEQ terminology implementing the National Environmental Policy Act of 1969 (NEPA) was published in their regulation. CEQ 1508.1 states "The terminology of this part shall be uniform throughout the Federal government."

b. *Federal Aviation Administration (FAA) Terms.* Order 1000.15A, FAA Glossary, dated December 18, 1975, contains terms which recur most often in agency communications.

c. *Preliminary environmental assessment* is the required early examination of the environmental impacts of proposed actions used to alert program officers of the action's possible significant impacts on the quality of the human environment or of impacts which may be highly controversial on environmental grounds.

d. *Environmental Impact Statement.* CEQ 1508.11 states "Environmental Impact Statement means a detailed written statement as required by Section 102(2)(c) of the Act."

e. *Draft Environmental Impact Statement* is the document that reflects FAA's initial evaluation of the environmental impact of a proposed action and shall accompany the proposed action through the Federal decisionmaking process. The agency makes its own evaluation and assumes responsibility for the DEIS. It is distributed by FAA to the EPA and other appropriate Federal, State, and local agencies for comment and is made available to the public.

f. *Final Environmental Impact Statement* is the document that reflects FAA's final evaluation of the environmental impact of a proposed action. Reports cited as references in the statement need not be included in the documentation.

g. *Finding of No Significant Impact (FONSI)* "means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference"—CEQ 1508.13.

h. *Record of Decision (ROD)* is "a concise public record of decision." See CEQ 1505.2 and 1506.1 for requirements.

i. *Prior Action Affirmation* is a finding by the FAA in a decision document that a proposed action is within the scope of a previously approved environmental impact statement or finding of no significant impact. Affirmation of a prior finding establishes the continued validity of a previous environmental determination for a currently proposed Federal action.

j. *Responsible Official* is the official designated with overall responsibility to furnish guidance and participate in the preparation of environmental impact statements, to independently evaluate the statements prior to approval, and to take responsibility for the scope and content of the statements. This individual must be personally qualified to assume such responsibility. This person may be authorized to evaluate and approve environmental assessments and may direct scoping activities for the FAA.

k. *Noise Sensitive Areas* may include residential neighborhoods, educational, health, and religious structures and sites, and outdoor recreational, cultural, and historic sites. A noise sensitive area is one where noise may interfere with the usual activities associated with use of the land. Whether sound interferes with a particular use depends upon the

level of noise exposure received and the type of activities involved. A site which is unacceptable for outside use may be acceptable for use inside a structure if adequate noise attenuation features are built into that structure.

l. *Sponsor* is any public agency eligible to receive Federal financial assistance under the Airport Act or anyone proposing an airport development project for which a Federal authorization is required.

m. *Scoping* is "An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."—CEQ 1501.7.

101. *Incorporation by Reference.* CEQ 1502.21 states that: "Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

102. *Prior Action Affirmation.* The preparation of a new EIS or FONSI is not necessary when it can be documented that: the proposed action conforms to plans or projects for which is prior EIS or FONSI has been filed; the data and analyses contained in the previous EIS or FONSI are still substantially valid; and that all pertinent conditions and requirements of the prior approval have or will be met in the current action. In this case, no additional assessment or coordination is required by this order, and the responsible official may affirm the prior action subject to review for legal sufficiency.

103. *Tiering.* Program offices shall, to the extent practicable, build upon broad prior assessments, whether EIS or FONSI. For example, long-term development statements and broad system, program, or regional statements may be incorporated by specific project EISs. The purpose of tiering is to eliminate repetition and allow discussion of issues at the appropriate level of detail. (See CEQ 1500.4, 1502.4, 1502.20, and 1508.28.)

104. *Reducing Paperwork.* Environmental documentation prepared under this Order shall be concise and clear. Length of documentation shall be reduced by avoidance of needless detail and by other means such as setting appropriate page limits. (See CEQ 1500.4.)

105. *Reducing Delay.* Environmental documentation prepared under this Order shall be integrated into the decisionmaking process and shall be carried on in a timely manner. (See CEQ 1500.5.)

106.–199. *Reserved.*

Chapter 2. Preliminary Considerations and Procedures

Section 1. Preliminary Environmental Review

200. *Planning and Development Stage.* The environmental impacts of proposed actions shall be assessed and considered concurrently with initial planning, development, or site considerations. (See CEQ 1501.2)

201. *Initial Review.* Preliminary environmental assessment shall indicate whether the proposed project could significantly affect the human environment with respect to noise, land, air and water quality; and is located in wetlands, coastal zones, or historic or archaeological sites; or areas inhabited by endangered species; or areas protected under DOT Section 4(f); and whether the action would be highly controversial on environmental grounds. At this stage, documentation is not required except as necessary to alert program officers to foreseeable environmental impacts and controversies.

a. If the proposed action includes any construction or site-specific modification of the physical environment, preliminary review should include a visit to the site. This visit should be made concurrently with any other preliminary on-site visit(s).

b. Secondary sources should also be used, including:

(1) Maps and aerial photos, such as those available from U.S. Geological Survey, U.S. Coast and Geodetic Survey, local land use planners, and transportation and engineering agencies;

(2) Interviews with land use planners, engineers, and local experts in forestry, fish and wildlife, agriculture, endangered species, historic preservation, and archaeology; and

(3) Reference sources, such as the National Register of Historic Places, and similar State or local listings.

202. *Identification of Issues and Problems.* Based on the initial review described in paragraph 201 above, the program officer(s) shall identify issues and problems having environmental significance to Federal, State, or local officials in the performance of their duties, or to the public. Further, the program officer(s) shall determine whether such issues and problems, *as they pertain to the proposed action,* have been addressed already in a broad system, program, or regional assessment.

203. *Early Coordination.* CEQ 1501.4(b) states, "The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing (environmental) assessments . . ." and in section 1506.2(b) "Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law."

204. *Budgetary Requirements.*

a. The Office of Budget is responsible for assuring appropriate environmental consideration and documentation at the budget stage. Criteria for environmental consideration in the Airway Facilities budget process are in Appendix 2, Paragraph 7.

b. Funding requirements resulting from the implementation of this order shall be justified and requested in accordance with existing budgetary and fiscal policies.

205. *Research.* Criteria for environmental consideration of research activities are in Appendix 1.

206. *Use of Contractors.* Contractor consulting services may be used to prepare environmental assessments and impact statements. They may also be used to prepare background or supplemental material and otherwise assist in preparing a draft or final environmental document for which the FAA takes responsibility.

a. *CEQ 1506.5(c)* provides that ". . . any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under section 1501.6(b), a cooperating agency." Further, it is intended that ". . . the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by cooperating agency to avoid any conflict of interest."

b. Under the provisions set forth above and when a determination has been made to have a contractor prepare the environmental impact statement, the contractor shall be selected either by the FAA *or* one of the following as a joint-lead agency:

(1) A state agency with statewide jurisdiction and responsibility for action per section 102(2)(D) of NEPA.

(2) A state or local agency which is subject to state or local requirements comparible to NEPA.

A cooperating agency may also select contractors. However, its roles are limited to providing information and analyses within its own area of special expertise or jurisdiction. It may obtain such data by contract under its own selection procedures. It would not be expected to select a contractor to prepare the entire FAA environmental impact statement.

c. *Contractor Preparation.* Where a contractor prepares an environmental impact statement, CEQ 1506.5(c) requires that "Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency (for its portion), specifying that they have no financial or other interest in the outcome of the project." Furthermore, ". . . the responsible Federal official shall furnish guidance and participate in the preparation and shall independently valuate the statement prior to its approval and take responsibility for its scope and contents."

207. *Role of Lead and Cooperating Agencies.* The various roles of the lead agency are described in CEQ 1501.5 through 1501.8. CEQ 1501.5 generally describes the role of the lead agency when more than one agency is involved in an action. CEQ 1501.6 describes the relationship with cooperating agencies. CEQ 1501.7 and 1501.8 define the role of the lead agency in the scoping process and in setting time limits.

a. *Federal agencies* which shall be invited by the responsible official to become cooperating agencies are those with jurisdiction by law in areas which may be affected by FAA actions or whose actions, plans, or developments may affect or impact the proposed FAA action or limit proposed alternatives.

b. *Federal agencies* with special expertise may also be asked to be cooperating agencies.

c. *The definition of a cooperating agency* in CEQ 1508.5 includes the provision that "A State or local agency of similar qualifications (i.e., jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal) or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency."

208. *Cumulative Impact.* In determining whether an environmental impact statement is required for a proposed Federal action, it is necessary to consider the overall cumulative impact of the proposed action and the consequences of subsequent related actions. CEQ 1508.7 states that "Cumulative impact is the impact on the environmental which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

209. *Reserved.*

Section 2. Preliminary Consultation Procedures

210. *Consultation.* The affected local units of Government, and pertinent Federal and State agencies identified under paragraph 202 should be consulted early in the process of preparing a DEIS, FONSI, or environmental assessment. Comments on the environmental impacts of the proposed action shall be considered, as appropriate, in determining whether the proposed action requires an EIS or FONSI and in preparing the DEIS or FONSI. This consultation with State and local agencies may be done through A–95 procedures.

211. *Cooperating Agencies.* When, under this Order, some element of the FAA is required to conduct an environmental assessment or prepare an EIS or FONSI, the FAA becomes the "Lead Agency" described in CEQ 1501.6. Under these rules, appropriate Federal agencies should be included on a cooperative basis. They should be consulted early when their expertise is essential to an evaluation of the impacts of the proposed action. For example:

a. The U.S. Fish and Wildlife Service shall be consulted when impacts on wetlands or fish and wildlife habitat may be involved.

b. The Bureau of Land Management shall be consulted when land with wilderness characteristics being considered for inclusion in the National Wilderness System may be used by the agency.

c. The Army Corps of Engineers shall be consulted if a dredge and fill permit will be required.

d. The U.S. Coast Guard must be consulted if agency action will likely involve the construction of any bridges over navigable waters. The U.S. Coast Guard is responsible for approving permits for such construction.

212. *A–95 Review.* State and areawide clearinghouses shall be notified of proposed Federal actions as set forth in the Office of Management and Budget (OMB) Circular No. A–95 (Revised). The purpose of the A–95 clearinghouse process is to assure that proposed Federal projects and assisted programs are reviewed and evaluated in advance in terms of their potential impact on or conflict with statewide or areawide comprehensive planning or upon the plans and programs of local Governments. The clearinghouse routinely notifies the apprpriate State and local agencies, including those agencies with expertise or jurisdiction with respect to environmental impacts. The FAA should notify State and local agencies not notified by the clearinghouse, if necessary. The A–95 procedure should be helpful in alerting program officers and responsible officials to possible environmental controversies. Comments on the environmental effects of proposed actions shall be considered in an EIS or FONSI, and shall be attached to the DEIS when it is circulated for review.

213. *Public Hearings.* a. The following elements are to be considered in deciding whether a public hearing is appropriate in cases where it is not statutorily mandated:

(1) The magnitude of the proposal in terms of environmental impact or controversy, economic costs, the size and location of the geographic area involved, and the uniqueness or amount of the resources to be committed;

(2) The degree of interest in the proposal, as evidenced by requests from the public or Federal, State, and local authorities that a hearing be held;

(3) The complexity of the issue and the likelihood that information presented at the hearing will be of assistance to the agency in fulfilling its responsibilities; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, or written comments on the proposed action.

b. The following shall be included in the notice for a public hearing:

(1) A description of the proposed action;

(2) The scheduling of the public hearing (time, date, and place); and

(3) The availability and location of a DEIS, FONSI, or environmental assessment report.

c. Notice of the hearing shall be in an areawide or local newspaper of general circulation. Interested parties and clearinghouses may be notified directly.

d. A DEIS, FONSI, or environmental assessment report shall be available to the public thirty days prior to the public hearing.

e. For FAA hearings, the responsible official may assign program officers the

responsibility for convening a hearing and serving as hearing officer.

214. *Citizen Involvement.* Citizen involvement, where appropriate, should be initiated at the earliest practical time and continued throughout the development of the proposed project in order to obtain meaningful input. Examples of citizen groups are: environmental, conservation, public service, education, labor, business, or aviation and airspace user organizations, and citizen advisory committees.

a. *Methods of Communication to be Used Include:* (1) Individual contacts, citizen advisory committees, telephone, and mail;

(2) Public hearings or meetings;

(3) Information for the public or through the media;

(4) Bulk mailings, advertisements, or notices in local newspapers or public places; and

(5) Up-to-date mailing lists of special interest groups and other interested parties at the National, regional, and local levels.

b. *Comments from these individuals* and groups shall be considered in preparing an EIS or FONSI. A summary of citizen involvement and the environmental issues raised shall be documented where practicable in the EIS or FONSI.

c. *Citizen involvement* may be appropriate in defining the scope of work of an environmental impact assessment report developed by an applicant for aid or by a consultant, or of a DEIS being developed by FAA.

215. *Scoping.* Scoping is an important and early integral part of the EIS process. (See CEQ 1501.7) This section provides that "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping." The responsible official must take the lead in the scoping process, including issuance of the notice of intent, inviting the participation of other agencies, determining the issues to be analyzed in depth, and assigning responsibilities for inputs to the environmental impact statement.

a. *The first step* is described in CEQ 1501.7 as follows: "As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (section 1508.22) in the **Federal Register**. . . ."

b. The notice of intent in CEQ 1508.22 ". . . means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

"(1) Describe the proposed action and possible alternatives.

"(2) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

"(3) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement."

c. *There is no requirement* for a scoping meeting, per se, on every project requiring an environmental impact statement. Depending on the nature and complexity of the project, some or all of the information needed during the scoping process may be obtained by letter or telephone.

d. *Delay.* If for some reason there is a lenthy period between the time a decision is made to prepare an environmental impact statement and the actual preparation, section 1507.3(e) provides that ". . . the notice of intent . . . may be published at a reasonable time in advance of preparation of the draft statement."

e. *CEQ 1501.7* further provides that the lead agency shall "Determine the scope (section 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement." Scope as defined in CEQ. 1508.25 ". . . consists of the range of actions, alternatives, and impacts to be considered. . . ." To determine the range of actions, the problems as described in the environmental assessment should be carefully reviewed. The proposed action and any actions functionally related to it should be clearly understood. Alternatives should be reviewed in this context, identifying those which need to be rigorously explored and objectively evaluated as well as those which can be eliminated CEQ 1502.14(a). Those impact categories which fall below the threshold of significant in the environmental assessment normally do not need further study or description in the environmental impact statement. Establishing a clear definition of the Federal action, the alternatives, and the impact needing detailed study (as well as those which do not) early in the scoping process should help considerably in managing the environmental impact statement preparation process.

216.–299. *Reserved*

Chapter 3. Enviromental Impact Statements and Findings of No Significant Impact

Section 1. Determination Whether an Action Is a Major Federal Action Significantly Affecting the Quality of the Human Environment

300. *Environmental Assessment.* Prior to undertaking an action which has not been categorically excluded by this order, all relevant environmental factors shall be assessed (see paragraphs 349–366). If it is concluded that the proposed action is a major Federal action significantly affecting the quality of the human environment, the responsible official shall prepare and file an EIS. If it is concluded that the action is not a major Federal action significantly affecting the quality of the human environment, the responsible official shall prepare and file a FONSI. CEQ. 1508.9 indicates that the environmental assessment is a concise document. It is the FAA's intention to adhere strongly to this instruction and to require only enough analysis in the environmental assessment for the following purposes:

a. To understand the problem and identify reasonable alternative solutions, including the proposed action.

b. To determine whether any potential impacts are significant, which would trigger the environmental impact statement process.

c. To provide the basis for the FAA's finding of no significant impact if the proposed action has no significant impacts.

d. To identify and satisfy special purpose Federal laws, regulations, and executive orders relevant to the proposal per paragraph 47e.

e. To identify and satisfy state and local laws and regulations applicable to the proposal.

f. In completing the above, to indicate agencies consulted (and to identify cooperating agencies for environmental impact statement preparation purposes).

301. *Actions Requiring Environmental Impact Statements.* a. *An EIS* shall be prepared where an FAA action:

(1) Has an effect that is not minimal on properties protected under Section 4(f) of the DOT Act, Section 106 of the Historic Preservation Act;

(2) Is likely to be highly controversial on environmental grounds;

(3) Is likely to have a significant impact on natural, ecological, cultural, or scenic resources of National, State, or local significance, including endangered species or wetlands, floodplains, and coastal zones;

(4) Is likely to be highly controversial with respect to the availability of adequate relocation housing;

(5) Causes substantial division or disruption of an established community, or disrupts orderly, planned development, or is determined not to be reasonably consistent with plans or goals that have been adopted by the community in which the project is located;

(6) Causes a significant increase in surface traffic congestion;

(7) Has a significant impact on noise levels of noise sensitive areas;

(8) Has a significant impact on air quality or violates the standards for air quality of the Environmental Protection Agency or an affected locality or State;

(9) Has a significant impact on water quality or may contaminate a public water supply system;

(10) Is inconsistent with any Federal, State, or local law or administrative determination relating to the environment; and

(11) Directly or indirectly affects human beings by creating a significant impact on the environment.

b. *In determining* whether a proposed Federal action requires an EIS, not only the overall, cumulative impact of the proposed action, but also the consequences of subsequent related actions must be considered. This is important because a series of related actions may individually have a limited environmental impact; however, when considered together, the actions may have a significant cumulative impact.

(1) If the action would permit further contemplated actions, the impacts of both those actions and the proposed action must be considered in determining whether to prepare an EIS.

(2) If an EIS is required, it must be processed before making a commitment which would enable the future action to foreclose or narrow the consideration of alternatives or mitigating measures.

c. *A proposed action* is considered highly controversial when the action is opposed on environmental grounds by a Federal, State, or local Government or by a substantial number of persons affected by such action. A controversy over the amount of acquisition or relocation payments is not a controversy with respect to the availability of relocation housing.

d. *In case of doubt* as to whether an EIS is necessary for a particular action, the responsible official or program officer should consult with AEE and AGC.

302. *Time and Length Limits.* The time and length limits appropriate to the environmental analyses of each FAA office and service are listed in the appropriate appendix. In accordance with paragraph 6 of this Order, changes in the limits listed in the appendices must be coordinated with AEE and AGC.

303.–304. *Reserves.*

Section 2. Preparation of Draft Environmental Impact Statements or Findings of No Significant Impact

305. *Timing of Draft Statement Preparation.* DEISs and FONSIs shall be prepared at the earliest practical time prior to the first significant decision point in the program or project development process. In this way, the analysis of environmental effects and the exploration of alternatives can be considered in the decisionmaking process.

306. *Applications.* The program officer may require each applicant for a grant, loan, permit, or other approval to which this order applies, to submit, with the original application, an environmental assessment report.

a. *Regardless of the nature* of the applicant's participation, the responsible official or the program officer must furnish guidance, actively participate in preparing the DEIS, EIS, and FONSI, and make his own evaluation prior to approval. The responsible official shall take responsibility for the scope and content of an EIS or FONSI by signing it.

b. *The responsible official* shall appropriately limit the actions an applicant may take prior to completion and approval of EISs and subsequent approval of the application.

307. *Use of Consultants.* Consultants may prepare background or preliminary material and assist in preparing a DEIS, EIS, or FONSI for which FAA takes responsibility. (See "Agency Responsibility," CEQ 1506.5.)

a. *The list of preparers,* described in paragraph 373 of this Order, shall include the names and qualifications of any contractor personnel, together with identification of particular analyses to which they contributed.

b. *The program office* shall conduct an independent evaluation of all analyses and information supplied by contractors. The names and qualifications of the FAA persons conducting this independent evaluation shall be included in the list of preparers.

308. *Scoping.* Once it has been determined that an EIS will be required, the project must be "scoped" in accordance with the CEQ rules (Sec. 1501.7 and others). Scoping, however, is not required if it has been determined that an EIS is not required.

309. *Inclusion of Environmental Determinations.* EISs or FONSIs shall include relevant documentation for environmental determinations under Section 4(f) of the DOT Act and other environmental findings and determinations.

310. *Interdisciplinary Approach.* Section 102(2)(A) of NEPA requires each Federal agency to apply a systematic, interdisciplinary approach in planning and decisionmaking which may impact the environment. (See CEQ 1502.6.) To assure that all environmental impacts are identified and assessed, all relevant disciplines should be represented. If the office or service does not contain the necessary disciplines, use of professional services available in other Federal, State, or local agencies, universities, or consulting firms is appropriate. (See paragraph 211.) Please note that a listing of the preparers and their qualifications is required under paragraph 373 of this Order and sections CEQ 1502.10 and 1502.17.

311. *Internal Review Process.*

a. Draft environmental impact statements and Findings of No Significant Impact shall be reviewed by affected FAA program divisions and staff officers at the regional or office level prior to filing for public review. DOT Act section 4(f) determinations are subject to review as stated in paragraphs 331 and 354 of this Order. This internal review is to assure that related foreseeable agency actions by other FAA elements are properly covered in the statement or finding and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out.

b. *Regional Directors* are responsible for designating a lead division or office to carry out this internal review.

312. *Regulations.* For regulations or rulemaking, the DEIS or FONSI should be available to reviewing agencies and the public prior to or concurrently with the notice of proposed rulemaking.

313. *Legislative Proposals.* a. *Before the FAA submits* to the Congress a legislative proposal, the office which originates the legislation shall prepare, circulate, and file with EPA an environmental statement or prepare and file a FONSI.

b. *The Office of the Secretary* shall clear the draft of the environmental statement for proposed legislation and submit it to the Office of Management and Budget (OMB) for circulation in the normal legislative clearance process.

(1) If the scheduling of congressional hearings on legislation does not allow adequate time for the completion of an

EIS, furnish Congress and make available to the public a DEIS, pending transmittal of the comments as received, and the final text.

(2) The FAA shall forward FONSIs to the Congress, if requested.

314. *Reserved.*

315. *Advisory Actions.* Some Federal actions, such as airspace actions, are of an advisory nature and are neither permissive nor enabling. Actions of this type are not ordinarily major Federal actions, and environmental assessments or statements are not required as a condition for accomplishing the action. If it is known or anticipated that some subsequent Federal action would require processing in accordance with environmental procedures, the advisory action should so indicate.

316.–319. *Reserved.*

Section 3. Processing of Draft Environmental Impact Statements

320. *General.* a. Environmental impact statements shall be reviewed by affected FAA program divisions and staffs officers at the regional level prior to filing or public review. This internal review is to assure that related foreseeable agency actions by other FAA elements are properly covered in the draft statement and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out.

b. For adoption of another agency's environmental impact statement refer to CEQ 1506.3.

321. *Public Notice.* Each responsible official shall assure that press releases, official notices, or other appropriate media announce to the public that a DEIS has been prepared and is being circulated and that comments on the environmental impact of the proposed action are being solicited.

a. Where appropriate, notification shall be made in cooperation with the project's sponsor.

b. The announcement shall contain information on the availability of the DEIS.

322. *Copies.* The responsible official shall have printed sufficient copies of DEISs and EISs to meet anticipated demand. A fee not to exceed reproduction costs may be charged for copies requested by the public if the original set of copies is exhausted.

323. *Circulation and Availability of DEIS.* a. *Distribution and Coordination for Intergovernmental Review.* (1) Per CEQ1503.1, comments on the draft environmental impact statement shall be obtained from or requested of appropriate Federal, State, and local agencies.

(2) For instructions on circulation of the summary in lieu of the full environmental impact statement, see CEQ 1502.19.

(3) All draft environmental impact statements will be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise, except that statements to be coordinated with any component of DOI or DOC shall be sent directly to the Washington headquarters of these departments.

b. *Circulate the DEIS* to agencies which have "jurisdiction by law or special expertise with respect to any environment impact involved" or "which are authorized to develop and enforce environmental standards." In addition, provide copies to:

(1) EPA headquarters (5 copies), EPA region (5 copies), P–1 (2 copies), AAE–1 (1 copy), AGC or designee (1 copy), the Service Director, other elements of DOT, and other FAA services as appropriate; and

(2) To State and local agencies, including cooperating agencies, agencies that commented substantially on the A–95 notification, affected cities and counties, and others known to have an interest in the action. The A–95 process may be used, by mutual agreement, for securing review of DEISs by State and local agencies.

c. *In addition,* make the EIS available at a sponsor's office, local public libraries, and at other appropriate locations of general public access.

d. *Availability to the Public.* The draft environmental impact statement shall be made available for public review per CEQ 1506.6.

e. *Filing with EPA.* The draft environmental impact statement will be filed with EPA per CEQ 1506.9. The EPA will subsequently publish a notice in the **Federal Register** per CEQ 1506.10 which will begin the 90-day period after which the Federal aciton can be taken.

324. *Comments on the DEIS.* a. *CEQ 1503.3* addresses specificity of comments. If the responsible official considers that the comments received from a commenting agency have not been made in accordance with the intent of this section, consultation with that agency should be undertaken to rectify discrepancies.

b. It is expected that comments on the draft statement or on the proposed action shall be as specific as possible and may appress either the adequacy of the statement or the merits of the alternatives discussed or both.

c. Comments from EPA are categorized according to the following criteria.

(1) The impact is rated by EPA as: LO—Lack of Objections, ER—Environmental Reservations, or EU—Environmentally Unsatisfactory.

(2) The statement adequacy is categorized by EPA as: 1—Adequate, 2—Insufficient Information, or 3—Inadequate.

325. *Comment Periods.* a. *A time period for comments* may not be less than 45 days from the Friday of the week following receipt of the DEIS by EPA, other agencies, and the public. Requests for reasonable extensions of time, when warranted by the magnitude and complexity of the statement or the extent of citizen interest, shall be granted.

b. *If no comments* or requests for extension are received within 45 days, it may be presumed that the agency consulted has no comments to make.

326.–329. *Reserved.*

Section 4. Findings of No Significant Impact

330. *General.* CEQ 1501.4(e) provides that the Federal agency shall "Prepare a finding of no significant impact (section 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement." Section 1508.13 defines a finding of no significant impact as ". . . a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (section 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared." The FAA will evaluate the environmental assessment to determine if any alternative which provides a good solution to the problem has no significant impacts. Unless there is an overriding reason for not selecting such an alternative, the FAA will then proceed with the preparation of a finding of no significant impact.

331. *Format.* a. A Finding of No Significant Impact (FONSI) may be incorporated in other program documents, or it may be a separate document, in which case it shall include a heading or statement identifying it as such, e.g.:

Department of Transportation

Federal Aviation Administration

(Originating Region, Office, Service, or Center)

Finding of No Significant Impact

(Subject of FONSI)

(Date)

b. The FONSI shall conclude, based on supporting evidence contained in the environmental assessment, that the action is not a major Federal action significantly affecting the quality of the human environment, and consequently, no environmental impact statement is required. Suggested language is:

"The opinion of the undersigned, upon careful review of this proposed action, is that pertinent environmental factors have been assessed and adequately documented, and the action is not a major Federal action significantly affecting the quality of the human environment."

c. All FONSIs shall be dated and signed by the responsible official.

332. *Scope of Documentation.* a. Depending on the complexity and degree of impact of a proposed action, a FONSI may range in content from a simple statement, supported with pertinent facts, that the action is not a major Federal action significantly affecting the quality of the human environment to an analysis involving the format and content necessary for environmental statements.

b. The FONSI shall include a brief description of the proposed action and its purpose.

c. The FONSI shall assess and document all relevant matters set forth in paragraphs 349 to 366 as necessary to support the conclusion that the action is not a major Federal action significantly affecting the quality of the human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of the proposed action. The FONSI shall include any measures to minimize adverse impacts on the environment.

d. The FONSI shall identify and discuss the alternatives considered, particularly those which mitigate environmental impacts, including the alternative of no action.

e. The FONSI shall determine the proposed action's consistency or inconsistency with community planning, and shall document the basis for the determination.

f. If a FONSI includes a Section 4(f) determination, include the material called for in paragraph 354. AGC, or his designee, shall review the Section 4(f) determination for legal sufficiency. The document must reflect consultation with the Department of the Interior and, where appropriate, the Department of Agriculture or the Department of Housing and Urban Development.

g. Where a Federal action affects wetlands, the FONSI shall document the opportunity for early public review, the agency's conclusion that there is no practicable alternative to the proposed action and that the proposed action includes all practicable measures to minimize harm. The FONSI shall document the outcome of consultations with the U.S. Fish and Wildlife Service and the pertinent State resources agency.

h. Where a Federal action affects floodplains, the FONSI must reflect the agency's determination that there is no practicable alternative and the agency's efforts to minimize potential harm to or within the floodplain as a result of agency action.

i. Where affected properties are included in or eligible for inclusion in the National Register of Historic Places, the FONSI shall include:

(1) If the effect is not adverse, documentation and outcome of consultations with the State Historic Preservation Office (hereafter SHPO) and evidence that the Advisory Council on Historic Preservation (hereafter ACHP) reviewed the determination of no adverse effect; and

(2) If the effect is adverse, documentation and outcome of consultations with the SHPO and the ACHP, including a Memorandum of Agreement with the ACHP.

j. Where an action significantly affects the coastal zone in a State with an approved coastal management program, provide the consistency determination to the State coastal agency at the earliest practicable time, but not later than 90 days prior to approval of the action (unless an alternative notification schedule is agreed to by the State). Notification may be provided using the existing A–95 process.

333. *Responsible Officials.* a. At the field level, FONSIs shall be reviewed by pertinent staff and program offices and may be approved by the Regional or Center Director or their designees.

b. Responsible officials shall send FONSIs originating in FAA Headquarters to AEE and to AGC for review. After review for legal sufficiency by AGC, the Service or Office Director may sign the FONSI.

334. *Coordination.* FONSIs are required to be coordinated outside of the FAA only where coordination is required by law or administrative directive (e.g., for Section 4(f) of the DOT Act, Section 106 of the Historic Preservation Act, Section 16(c)(4) of the Airport Act, Section 7 of the Endangered Species Act, or wetlands impact).

335. *Approval Format.* Approval shall include the following: "After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of NEPA.

Approved: _____
Date_____

Disapproved: _____
Date_____"

336. *Distribution.* A copy of the FONSI is filed in the office of the responsible official and a copy forwarded to the appropriate Service Director for review for consistency with the policy and procedures of this order. Service Directors may waive this requirement, subject to AEE concurrence.

337. *Availability for Public Information.* FONSIs are public information, and as such, shall be made available upon request pursuant to FAA procedures. Public notice of this availability shall be made monthly through AEE in the **Federal Register** in accordance with CEQ 1506.6.

338.–339. *Reserved.*

Section 5. Environmental Impact Statements

340. *Format.* The following basic format should be followed for all Environmental Impact Statements, both draft and final. Additional section headings (where appropriate) may be used. (See CEQ 1502.10.)

a. Cover Sheet
b. Summary
c. Table of Contents
d. Purpose of and Need for the Proposed Action
e. Alternatives (Including the Proposed Action)
f. Affected Environment
g. Environmental Consequences
h. List of Preparers
i. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
j. Index
k. Appendices (if any)

341. *Cover Sheet.* Each EIS shall have a cover sheet that includes the

information required in CEQ 1502.11 plus a heading as follows:

Department of Transportation

Federal Aviation Administration

(Originating Region, Office, Service or Center)

(List of Cooperating Local, State, and Federal Agencies)

Final (or Draft) Environmental Impact Statement

(Title and Location of Proposed Action

(One Paragraph Abstract)

(Date by which comments must be received and name, address, and telephone number of Point of Contact)

This statement is submitted for review pursuant to the following public law requirements: Section 102(2)(C) of P.L. 91–910, 42 U.S.C. 4321; Section 4(f) of P.L. 89–670, Section 106 of the National Historic Preservation Act; etc * * * as applicable.

342. *Summary.* In addition to the requirements of CEQ 1502.12, FAA environmental impact statement summaries shall highlight evidence in the environmental impact statement which supports required assurances and indicate mitigation measures which are proposed. The summary of the final environmental impact statement shall specify any mitigation measures which are a condition of approval and identify any monitoring to be done. In addition, the final environmental impact statement summary shall identify the environmentally preferable alternative or alternatives and the FAA's preferred alternative (in most cases, the proposed action) including reasons for these choices. The format for the summary which shall accompany draft and final EISs shall include at least the following:

Summary

( ) Draft ( ) Final
(Check one)

Department of Transportation, Federal Aviation Administration. Name, address, and telephone number of individual who can be contacted for additional information about the proposed action or the statement.

(1) Name of Action. (Check one)

( ) Legislative

( ) Administrative

(2) Brief description, purpose and location of action, indicating which State(s) and counties are particularly affected.

(3) Major conclusions.

(4) Areas of controversy.

(5) List alternatives considered, including alternatives raised by other agencies and the public.

(6) Date(s) the draft statement and the final statement, if issued, were made available to the CEQ and to the public.

(7) Date of the public hearing, if one was held.

343. *Timing.* Preparation of an EIS shall begin as close as possible to the initiation of a proposal requiring an EIS. If the proposal is made to the FAA from outside the FAA, and if the proposal would require an EIS, that EIS shall be prepared, circulated, and completed prior to the final decision on the proposal.

344. *Index and Appendices.* a. For complex environmental impact statements in which several topics have been discussed in various places through the text, an index shall be included at the end to assist the reader and facilitate review.

b. When an appendix is used, CEQ 1502.18 requires that it: "(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference * * *. (b) Normally consist of material which substantiates any analysis fundamental to the impact statement. (c) Normally be analytic and relevant to the decision to be made. (d) Be circulated with the environmental impact statement or be readily available on request."

Section 6. Content of Environmental Impact Statements

345. *General.* EISs document the consideration and evaluation of environmental impacts in FAA decisionmaking.

a. *The required information* should be written in plain language. (See CEQ 1052.2.)

(1) EISs shall be analytic rather than encyclopedic. (See CEQ 1502.2(a).)

(2) Analysis of facts, references to literature, special studies or textural material within the statement shall support conclusions. Background material shall be held to a minimum. (See Sections 1502.14, 1502.15, and 1502.1C of the CEQ Regulation.)

(3) EISs shall be prepared using an inter-disciplinary approach integrating the natural and social sciences. (See CEQ 1502.6.)

[4] Tiered and/or corollary studies (including all or parts of EISs prepared for similar or related projects) should be incorporated by reference and not repeated. (See paragraph 101 of this Order)

b. *The length* of an EIS shall normally be less than 150 pages. In no case shall an EIS exceed 300 pages without prior concurrence of the Office of Environemnt and Energy (AEE).

346. *Need for and Purpose of Action.* CEQ 1502.13 states "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing alternatives including the proposed action." Normally, the purpose and need as described in the environmental assessment should suffice for purposes of the environmental impact statement.

347. *Background Information.* A short section describing or discussing background information may be appropriate. This section should briefly highlight related developments to date and present a general overview of significant aspects of the situation under review. It may include such items as bond actions, action pertinent to the proposal by the community or citizen groups and any other unique and significant factors associated with the project.

348. *Probable Impacts on the Affected Environment.* The document shall describe and assess relevant probable impacts, both beneficial and adverse, of the proposed actions on the human and natural environment and shall:

a. Include those adverse effects which cannot be avoided should the proposal be implemented;

b. Describe the actions to be taken to enhance beneficial impacts; and

c. Document the assessment of all relevant environmental factors in paragraphs 349 to 366 to the extent necessary to consider the environmental impacts of a proposed action and its alternatives. The attention given to different environmental factors will vary according to the nature, scale, and location of the proposed action.

349. *Noise.* a. *Background.* (1) The purpose of noise analyses is to present information about the effects of noise on noise sensitive areas;

(2) Because noise effects vary with different human activities, the appropriate quanititative measure or descriptor of noise exposure may vary, depending on the activity under discussion and the availability of substantive scientific data relating noise level to impact on humans.

(3) Any one or more of the following three measures of noise exposure may be required, depending on the circumstances:

(a) Maximum sound level in dB(A) (single event measure), see *Calculations of Maximum A-Weighted Sound Levels Resulting from Civil Aircraft*

Operations, DOT/FAA unnumbered report, June 1978;

(b) Duration above a selected reference sound level in minutes (time above measure); and

(c) The cumulative noise measure, 24-hour Equivalent Noise Level (hereafter Leq). An alternative cumulative measure may be used if required by state or local regulations or if previously used in a tiered action.

b. *Requirements.* Except as provided paragraph 349c the analyses shall include information for three conditions: the present condition; the condition forecast WITHOUT the proposed change; and, the condition forecast WITH the proposed change. All interrelated actions (e.g., installation of navigation aids and air traffic control procedures) shall be considered.

(1) For actions involving airport location, runway location, major runway extension, or runway strengthening which would permit operation by larger or noisier aircraft, the following noise information shall be presented:

(a) Continuous contours for each of the required conditions, showing the boundaries of all areas exposed to noise levels equal to or greater than Leq 62.5;

(b) For noise sensitive areas identified within the contours presented in (a), an additional analysis is required if the proposed action is highly controversial because of noise impacts or if the noise at any point within the identified noise senstive areas increases more than three Leq units over that which would be created without the project. This additional analysis shall provide information on average time above 65, 75, 85, 95, 105, and 115 db(A) for a complete day's operation and for the night period (10 p.m. to 7 a.m.). Such information will be presented for the forecast condition with the project and the forecast condition without the proposed project. This information may be provided for selected points in intervals of not greater than 3,000 feet within the identified noise sensitive areas. The FAA Integrated Noise Model can provide these sound level and noise measure for discrete points.

(2) For new aircraft arrival or departure tracks (Arrival or departure tracks are flight segments within 3,000 feet above the surface.) the following noise informatin shall be presented for noise sensitive areas:

(a) The information described in b(1)(a) and (b); or

(b) Maximum sound level in dB(A) for each aircraft type (single-event measure) and the total number of operations for daily, evening and night periods for selected points in intervals of not more than 3,000 feet within identified noise sensitive areas.

(3) For actions other than b(1) and (2), for example, intermittent stationary sources (e.g., cooling towers) or mobile sources (non-jet aircraft in flight, aircraft taxing or surface vehicles) provide maximum sound levels and frequency of occurrence at noise senstive areas.

(4) For stationary sources which produce relatively steady levels of noise, provide maximum sound level and duration at noise sensitive areas.

(5) Policy, administrative, and regulatory actions, particularly those which are environmentally protective with effects dispersed across the air transportation system often may not reasonably be assessed using traditional noise analyses methods. In such cases, the analyses may use innovative methods. This, however, does not diminish the preparer's principal responsibility for assuring and defending the adequacy of the analyses.

c. *Exceptions.* (1) A full noise analysis is not required for those actions which cause increases of less than 2dB(A) for a single-event measure or 1 unit Leq for a cumulative noise measure and are not controversial. These are respectively:

(a) Actions which result in reductions in distance between the noise source and noise sensitive areas of less than 20% (without change in the noise characteristics of the source) and which do not expose new land areas to noise.

(b) Any action that does not increase total daily operations by more than 25% along any arrival or departure flight track (runway utilization rates, ratio of day-to-night operations and the relative proportions of different aircraft types remaining unchanged).

(2) However, if a series of independent or related actions, which when combined, may cause the limits of c(1) to be exceeded, then a noise analysis is required to determine the total increase in noise exposure for an affected area. The purpose of this requirement is to avoid the segmenting of actions that individually may not exceed the limits of c(1) but collectively will result in c(1) limits being exceeded. Close coordination among FAA services and offices and the airport operator may be required to fully assess the total noise impact of a series of proposed actions. The noise analysis shall be performed at the earliest practicable time when alternatives to a proposed action or series of actions are open for consideration. Consideration of proposed actions in regard to these exception criteria may start with the approval date of this order or the date of the last prior analysis under Order 1050.1B, whichever is later.

d. *Format.* (1) The following graphics are required where an action falls under 349b.(1):

(a) Layout plan of the present and, where relevant, proposed airport; and

(b) A map of the airport vicinity including the following for each condition analyzed:

1 runway location and orientation;

2 flight tracks used in the analysis;

3 land use, present and planned;

4 noise sensitive areas, by type;

5 zoning, proposed property acquisition, or other land use controls; and

6 prominent legible noise exposure data.

(2) Analyses under 349b.(2) and b.(3) and b.(4) require all relevant items under d.(1)(b) above but in no case less than items d.(1)(b)*3*, (b)*4*, and a convenient display or cross-reference of the noise information to the locations to which it applies.

e. *Analysis.* The general literature on the effects of noise on man and on recommended land use or exposure criteria varies in depth, breath, accuracy and reliability. The use of such information is an effort by the FAA to make the state-of-the-art visible to the public. The information, therefore, should permit lay and technical readers to relate noise exposure data to an understanding of its potential effects. Accordingly, the noise analysis shall include:

(1) A description, in terms suitable for lay and technical readers, of the sound level measures and noise descriptors used in the analysis, both for single event measures (for example dBA or EPNdB) and Leq cumulative measure.

(2) A discussion of:

(a) any non-standard data or calculation procedures used or derived for the purpose of dealing with any unique aspect of the analysis;

(b) clear and concise references to source data or procedures; and

(c) noise from other than aircraft operations if the additive effect is significant.

(3) An analysis describing the expected noise exposure on each noise sensitive activity in the area with the following considerations:

(a) A discussion of noise impact for each noise sensitive area, including such information as the number of people and schools and the size of residential land area exposed to specified noise levels, and any other information as may be necessary to describe the degree of incompatibility between the noise and existing and planned land uses. (e.g.,

residential, cultural, religious, education, industrial, agricultural, or recreational.)

(b) The analysis shall, to the extent reasonable, discuss potential effects of noise on hearing, communications interference (with consideration to educational, occupational, recreational, and religious activities) sleep interference, and annoyance, both within the context of outdoor activities as well as indoor activities.

(c) Consideration shall be given to the amount of acoustical protection provided by construction and architectural characteristics as well as climatological situations which might affect life styles and therefore alter the "average" interpretations placed on the effects of noise.

f. *Records.* The responsible office shall assure the sufficient information is retained to permit an independent review to recreate the complete noise exposure analysis.

350. *Air Quality.* Air quality should be examined by estimating the pollutant impact of the proposed action in terms of existing and forecast operations. Air pollutant concentrations as well as total amounts of pollutants should be estimated and evaluated, as necessary, for consistency with State implementation plans for air quality under the Clean Air Act and other State or local standards, EPA indirect source regulation (40 CFR 51.18), if applicable, and other applicable standards. Air pollution effects of increased surface traffic resulting from increased air traffic should be estimated and considered. Methods should be proposed or referenced for controlling and minimizing air pollution resulting from construction and operation of the project. As necessary, airport layout and design alternatives for major airport expansion or alternative sites for new large airports should be evaluated in terms of air quality impact, particularly in designated air quality maintenance areas.

351. *Water Quality.* Water quality requirements, available water resources, and impacts on existing water tables should be considered. Facilities for treatment and disposal of wastes also should be considered and evaluated for consistency with applicable standards. Consult with the representative organization responsible for areawide waste treatment management and planning under the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), when necessary. Identify Federal, State and local standards for water quality and measures to be taken to ensure compliance with such standards both during construction and operation of the proposed project, if applicable. Measures to be taken to minimize pollution due to surface runoff, which may include pollution infiltration from areas of extensive grading and pavement or placement of piles, should be discussed. Short-term and long-term effects of construction and operation of the proposed project upon area drainage and aquifers should also be discussed.

352. *Social Impacts.* A proposed action may have social and community impacts. Where displacement of people or businesses or disruption of established communities occurs, the following information from secondary sources and community sources, when available, should be included in order to determine the manageability of relocation:

a. An estimate of the numbers and the characteristics of households to be displaced (e.g., minorities, income levels, renter or owner, elderly, large families);

b. Impact on the neighborhood and housing where relocation is likely to take place;

c. Disruption or impact on the stability and cohesion of any established community;

d. A description of businesses to be displaced and general effects of business dislocation on the economy of the community;

e. Ability to provide adequate relocation housing for the types of families to be displaced and a description of actions proposed to remedy any insufficiency, including, if necessary, housing of last resort, as authorized by Section 206(a) of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

f. Effects of surface traffic disruption, including effects on access to community facilities, recreation areas, and places of residence and business.

g. Results of consultation regarding the impacts with local officials, relocation or other social agencies, local human rights and civil rights organizations and public interest groups.

h. A description of any special location advisory services to be provided for the elderly, handicapped, or illiterate regarding interpretation of benefits and other assistance available.

353. *Induced Socio-Economic Impacts.* These impacts may include shifts in the patterns of population movement and growth, public service demands, and changes in business and economic activity. The effects of these impacts should be estimated and discussed in consultation with pertinent local officials.

354. *DOT Section 4(f).* This section requires identification of and special effort to preserve public parks, recreation areas, wildlife and waterfowl refuges, and historic sites, and areas of natural scenic beauty of local, state, or national significances affected by the proposed action. The description should include size, activities, and relationship to other similarly used lands in the vicinity.

a. The use of public parks, recreation areas, wildlife and waterfowl refuges, and historic sites, must be avoided if there is a feasible and prudent alternative.

b. A publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance by the Federal, State, or local official having jurisdiction thereof. Any such statement of insignificance is subject to review.

c. Where lands are administered for multiple uses, the official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes.

d. The discussion of the alternative of taking no action and of alternative designs and locations shall include cost estimates with figures showing percentage differences in total project costs and technical feasibility assessments.

e. Analysis of the environmental impact of alternatives shall include evidence that unusual factors or unique problems are present and that the cost or community disruption resulting from alternatives reach extraordinary magnitudes.

f. If there is no feasible and prudent alternative to the use of such land, include a statement of actions taken or to be taken to minimize harm to the protected area. This may include using project funds to replace or improve land and facilities and designing measures such as planting or screening to mitigate any adverse effects. Also include evidence of other measures to enhance and maintain natural beauty.

g. If land is involved which was acquired or developed with Federal grant money (i.e., open space under Department of Housing and Urban Development; the land and water conservation fund, fish and wildlife restoration under the Pittman-Robertson and Dingell-Johnson Acts, and certain transfers to Federal surplus property to the States, for park, refuge, and historic purposes), the final documentation shall

include an appropriate communication or finding from the grantor agency.

h. The documentation shall reflect consultation with the Department of the Interior and, as pertinent, the Department of Housing and Urban Development or the Department of Agriculture.

i. The document shall include a statement that there is no feasible and prudent alternative to the use of the land and that the action includes all possible planning to minimize harm.

j. Questions regarding the application of Section 4(f) should be referred to AEE.

355. *Historical and Archaeological Sites.* The document should specify actions to be taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archaeological, or cultural significance affected by the project.

a. The statement should identify, through consulting the National Register of Historic Places and National Register Criteria (36 C.F.R. Part 800), whether proposed actions will affect properties included in or eligible for inclusion in the National Register.

(1) The National Register of Historic Places is published each February in the **Federal Register.**

(2) New entries to the National Register and listings of eligible properties are published regularly, usually on the first Tuesday of each month, in the **Federal Register.**

(3) The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

b. If application of the ACHP's criteria of effect indicates that the project will affect a property included in or eligible for inclusion in the National Register of Historical Places, the document should state whether or not there is an adverse effect.

c. Evaluation of the effect should be made in consultation with the SHPO and in accordance with the ACHP's Criteria of Adverse Effect (36 C.F.R. Part 800).

(1) Determination of no adverse effect should be documented with evidence of the application of ACHP's Criteria of Adverse Effect, the views of the SHPO and review by the ACHP.

(2) If the project will have an adverse effect upon property included in or eligible for inclusion in the National Register of Historic Places, the responsible official shall attempt to execute a Memorandum of Agreement with the ACHP. If a Memorandum of Agreement cannot be reached, the responsible official shall request, in writing, the comments of the ACHP. In soliciting these comments, the responsible official shall:

(a) Consult with P through AEE two weeks prior to a formal request to ACHP for review.

(b) Notify the SHPO of this request.

(c) Prepare a preliminary case report pursuant to 36 C.F.R. Part 800 containing information regarding the project.

d. To determine whether the project will affect properties of State or local historical, architectural, archaeological, or cultural significance that are not included in or eligible for inclusion in the National Register, the responsible official should consult with the SHPO, with the local official having jurisdiction of the property, and where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property.

e. Use of land from historic properties of Federal, State, and local significance, as determined by the official having jurisdiction thereof, involves Section 4(f) of the DOT Act. The document should include evidence necessary to support a Section 4(f) determination. If there is reason to believe that historic or archaeological resources exist, a survey will normally be required.

f. Any foreseeable irreplaceable loss or destruction of significant scientific, prehistorical, historical, or archaeological data shall be identified in the document, with evidence of notice provided to the Secretary of the Interior and measures described to undertake the recovery, protection, and preservation of such data, including preliminary survey, salvage, or other investigations as needed. The FAA has an agreement with the Department of the Interior for assuring compliance with the Archaeological and Historic Preservation Act of 1974, providing for oversight relative to mitigation of damage to archaeological and historic data incident to construction activities of FAA or FAA assisted projects.

356. *Floodplain Management.* If the action occurs in a floodplain or substantially affects a floodplain (the lowland relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year) consider alternatives to avoid adverse effects and incompatible development. If the only practicable alternative requires siting in a floodplain, include the finding and describe actions to minimize potential harm to or within the floodplains utlilizing the methods set out in the Floodplain Management Guidelines.

357. *Considerations Relating to Wetlands.* Where impacts on wetlands, including draining, channeling, filling, diking, impounding structures or facilities in streams or other bodies of water are involved, the document should include:

a. Information on location, types, and extent of wetland areas that might be affected by the proposed action;

b. An assessment of the impacts on the wetlands and associated wildlife from both construction and operation of the project;

c. Results of coordination with the local representative of the Department of the Interior, the Department of Commerce, and any other officials such as the Corps of Engineers with special expertise concerning the impacts of the project on the wetlands and the worth to the community and to the Nation of the particular wetlands area involved;

d. A determination that: (1) There is no practicable alternative to such construction;

(2) The proposed action includes all practicable measures to minimize harm to wetlands resulting from such use;

(3) The determination may include consideration of economic, environmental and other pertinent factors;

e. Consideration of the following factors: (1) Public health, safety, and welfare, including water supply, quality, recharge and discharge, pollution, flood and storm hazards, and sediment and erosion;

(2) Maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources;

(3) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

358. *Coastal Zone Management Program.* Where the proposed action significantly affects (changes the manner of use of quality of land, water, or other coastal resources, or limits the range of their uses) the coastal zone in a state with an approved coastal management program, include:

a. The proposed action and associated facilities, access, their primary, secondary, and cumulative effects on the coastal zone.

b. The consistency determination and evidence of consultation with the State coastal management agency.

c. If it is determined that the proposed project is inconsistent with the state's approved program, the responsible official shall not approve the action except upon a finding by the Secretary

of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or necessary in the interest of national security. The EIS shall document this finding.

359. *Energy Consumption and Conservation.* The environmental process should include, as appropriate to the project's scope and requirements, a determination as to the potential use and need of energy and/or other natural resources. In assessing energy demands, consideration should be given to all practical and acceptable conservation measures to ensure minimum energy consumption. Agency Order 1052.3, "Policy and Procedures for Energy Conservation," provides direction and guidance in energy conservation and assistance in assessing the energy related aspects of agency projects and/or actions.

360. *Construction Impacts.* In general, adverse impacts during construction will be of less concern than long-term impacts of a proposal. None-the-less, the report should appropriately address such matters as the following, identifying any special problem area:

a. Noise impacts from construction or delivery of materials through residential areas and any specifications providing maximum sound levels;

b. Effect of spoil disposal on borrow areas and disposal sites (including reference to pertinent specifications);

c. Controls on air pollution from dust, burning, etc. (with reference to pertinent specifications or advisory circulars);

d. Impacts on water quality from run-off and associated sedimentation and control measures (reference specifications or advisory circulars); and

e. Mitigating measures employed, including the scheduling of construction activities to avoid critical periods for wildlife and fish propagation, if applicable.

361. *Wildlife and Waterfowl.* Long-term loss may accrue by virtue of reduction of the overall wildlife carrying capacity of a given land area. Where part of a wildlife habitat is removed it should be determined whether the remaining habitat is sufficient to maintain affected wildlife populations at viable levels. These long-term losses may be described in general terms unless a threatened or endangered species is involved.

362. *Impacts Relating to Endangered and Threatened Species of Fauna and Flora.* The document should include evidence that the proposed action will not jeopardize the continued existence of endangered or threatened species or result in the destruction or modification of critical habitat of these species.

a. If an action may affect endangered or threatened species, listed by the Department of the Interior, or their habitat, the document should provide evidence of consultation initiated by written request to the Regional Director of the Fish and Wildlife Service (hereafter FWS) or the National Marine Fisheries Service (hereafter NMFS), as appropriate, regarding the impacts of the action on the species. The FWS, Department of the Interior, is responsible for protection of terrestrial and freshwater species; the NMFS, Department of Commerce, is responsible for protection of marine species.

b. The document should describe the anticipated effects of the proposed action and alternatives to the action on listed species, the nature of the listed species' habitat, and whether the FWS or NMFS has determined that habitat to be critical.

c. The final statement should include the results of consultation with FWS or NMFS including the biological opinion of the FWS or NMFS and indicate any specific measures which will be taken to conserve listed species and to avoid destruction or modification of critical habitat.

363. *Light Emissions.* Aviation lighting required for the purposes of security, obstruction clearance, and navigational guidance, may create an annoyance among people in the vicinity of the installation. In this instance, documentation shall include:

a. Site location with a diagram of lights or light system.

b. Description of lights, as to their purpose, installation, beam angle and measurements, intensity, color, flashing-sequence, and other pertinent characteristics of the particular system and its use.

c. Measures to lessen any annoyance, such as shielding or angular adjustments.

364. *Visual Impacts.* Any special significant visual impacts shall be described, particularly in areas of natural beauty or historic or architectural significance. Consideration of aesthetics, design, art and architecture shall be documented, including landscape architecture, graphics, interior design, industrial design, and engineering design, and consultation with local and state art councils and other organizations interested in design, art and architecture.

365. *Solid Waste Impacts.* The amount of solid waste in volume or weight should be estimated and the procedure for its disposal described for those actions resulting in a significant increase or change in waste disposal. Any State or local regulations for disposal of solid waste should be described.

366. *Unique and Prime Farmlands.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops. Unique farmland is land that is used for the production of specific high value food and fiber crops. The responsible official should consult the U.S. Department of Agriculture's Land Use Committee to determine whether the land is prime and unique farmland. If it is identified as such, the responsible official should document efforts to insure that such farmlands are not irreversibly converted to other uses.

367. *Environmental Consequences.* CEQ 1502.16, states that "This section forms the scientific and analytic basis for the comparisons under section 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) (alternatives) as is necessary to support the comparisons. This discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short term uses of man's environment and the maintenance and enhancement of long term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in section 1502.14. It shall include discussions of: "(a) Direct effects and their significance (reference section 1508.18 for definition of 'effects' both direct and indirect) . . . (b) Indirect effects and their significance . . . (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See section 1506.2(d) (Elimination of duplication with State and local procedures).) (d) The environmental effects of alternatives including the proposed action. The comparisons under section 1502.14 will be based on this discussion. (e) Energy requirements and conservation potential of various alternatives and mitigation measures. (f) Natural or depletable

resource requirements and conservation potential of various alternatives and mitigation measures. (g) Urban quality, historic and cultural conservation potential of various alternatives and mitigation measures. (h) Means to mitigate adverse environmental impacts (if not fully covered under section 1502.14(f))."

368. *Actions to Minimize Unavoidable Adverse Effects.* Actions to be taken to minimize unavoidable adverse effects should be described, and reported in conformance to CEQ 1502.14 and 1502.16.

369. *Alternatives.* An EIS or, as appropriate, a FONSI thoroughly and objectively evaluates the environmental impact of all reasonable alternatives, particularly those which mitigate environmental impacts and sets forth the reasons why the alternatives are rejected.

a. *CEQ 1502.14* states that "This section is the heart of the environmental impact statement." Further, it is to be "Based on the information and analysis presented in the sections on the Affected Environment (paragraph 374 of this Order) . . . and the Environmental Consequences (paragraphs 349 to 366). . . ." Discussion of alternatives must include key references and show the extent of analysis of alternatives. The environmental assessment should be reviewed for those alternatives which should be dropped from further consideration. However, such alternatives should be identified in the EIS with a simple explanation of why no further investigation was necessary. Alternatives covered in the environmental assessment may require expansion of certain portions. During the scoping process (paragraph 215), those areas needing additional work should be identified.

b. *The CEQ Regulations* include the following directions on alternatives:

(1) *Section 1502.1.* The environmental impact statement ". . . shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."

(2) *Section 1502.2(e).* "The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker."

(3) *Section 1502.14.* The environmental impact statement ". . . should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."

(4) *Section 1502.14(a).* Agencies shall "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."

(5) *Section 1502.14(b).* Agencies shall "Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

(6) *Section 1502.14(c).* Agencies shall "Include reasonable alternatives not within the jurisdiction of the lead agency."

(7) *Section 1502.14(d).* Agencies shall "Include the alternative of no action."

(8) *Section 1502.14(f).* Agencies shall "Include appropriate mitigation measures not already included in the proposed action or alternatives."

(9) A list of alternatives considered with only enough description to comprehend them. For each alternative, any connected or cumulative actions must be included (CEQ 1508.25(a) (1) and (2)).

(10) Identification of the sponsor's proposed action if one has been chosen.

(11) A concise statement explaining why any initial planning alternatives have been eliminated from study.

(12) A listing under each alternative of any areas of potential significant impact or a statement that the alternative has no significant impacts. The environmental assessment should indicate whether an alternative is being analyzed on the basis of mitigation measures assumed to be built into it.

(13) A listing under each alternative of any applicable Federal, state, or local special purpose laws and regulations and potential required permits and licenses.

(14) Graphics as appropriate to aid in understanding the alternatives. These would be of value in showing alternative runway configurations, for example, although not useful in dealing with alternative transportation modes or regulatory changes.

370. *Relationship Between Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity.* The document must examine the extent to which the proposed action involves trade-offs between short-term environmental gains at the expense of long-term losses and long-term gains at the expense of short-term losses and the extent to which the proposed action forecloses future options.

371. *Irreversible and Irretrievable Commitments of Resources.* The document must examine the extent to which the proposed action would irreversibly and irretrievably curtail the range of beneficial uses of the environment including cultural as well as natural resources. If a project involves new, unusual or limited sources or types of materials, including a quantitative estimate and description. Normally, labor and materials required to accomplish a project do not significantly curtail the range of beneficial uses of the environment.

372. *Citizen Involvement.* Document a summary of citizen involvement, including meetings and public hearings, and any environmental issues raised. This summary should include reference to written comments and opinions.

373. *List of Preparers.* CEQ 1502.17 states "The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible the persons who are responsible for a particular analysis including analyses in background papers, shall be identified. Normally the list will not exceed two pages."

374. *Affected Environment.* CEQ 1502.15 should be followed, in particular the sentence in this section which directs that "The descriptions (of the affected environment) shall be no longer than is necessary to understand the effects of the alternatives." The Affected Environment section includes:

a. A location map, vicinity map, and airport layout plan (where appropriate).

b. Existing and planned land uses and zoning in any affected area including affected residential areas, public parks, wildlife and waterfowl refuges, wetlands and coastal zones, recreation areas, and historic facilities and archeological sites.

c. Indicate nearby schools and places of public assembly, hospitals, shopping areas, and adjacent political jurisdictions affected by the proposed development.

d. Population, industrial and commercial growth characteristics, and assumptions used to justify the project and determine secondary impacts, if these are relevant to the proposal.

e. Any contemplated future actions, including facility installations and procedural actions, which have not been included in the Alternatives section and

which should be described to show their relationship to the proposal.

f. Other planned and developed activities in the affected area (e.g., highways and other transportation projects, housing development and relocation, ect.) which are interrelated to the proposal and/or which would produce cumulative impacts.

g. This section may also highlight important background material, such as previous development and environmental actions which help to explain the present proposal. It may also include such items as bond actions, action by the community or citizen groups pertinent to the proposal, or any other unique factors associated with the project which do not properly belong in another section of the document.

Section 7. Preparation, Approval and Distribution of Final Environmental Impact Statement

375. *Utilization of Comments.* a. *Comments received on the DEIS* and imputs (in summary form if appropriate) from citizen participation, and public hearings shall accompany the EIS through the normal internal project or program review process.

b. *In preparing and EIS,* revise the DEIS, as appropriate, to reflect comments received, issues raised through the community involvement and public hearing process, or other consideration.

Include an appropriate response, or reference to subject's discussion in the statement. Include copies of all substantive commenting letters. If the number of comments is too voluminous to include, a summary may be prepared in accordance with CEQ 1503.4(b).

c. *Identify and discuss* any unresolved environmental issues and efforts to resolve them through further consultation. For instance, where an agency comments that the statement contains inadequate analysis or that the impacts are too adverse for approval, either resolve the issue or document in the EIS efforts to resolve the issue, and set forth any action that will result.

376. *Approval of Final Environmental Impact Statements.* a. *For EISs which originate at headquarters, the Office or Service Director shall send one copy each to AEE and AGC for review. After AGC review for legal sufficiency, the Director or designee should transmit two copies to appropriate elements of OST for concurrence, if required, with a request for concurrence within 15 to 30 days, depending upon the complexity of the statement. Following concurrence, if required, the Office or Service Director may approve the EIS and file it with EPA.*

b. *For EISs originating in the field,* not subject to headquarter's concurrence, the Regional Director or Center Director shall approve and file the EIS with EPA, following review for legal sufficiency by the Regional Counsel.

c. *For EISs originating in regions or centers,* but subject to headquarters concurrence, the Regional Director or Center Director approves the EIS and submits it to the appropriate Service or Office Director. The Service or Office shall send copies to AEE and to AGC for review. After AGC review for legal sufficiency, the Service or Office Director shall transmit two copies to any appropriate elements of OST for concurrence, if required, with a request for concurrence within 15 to 30 days, depending on the statements complexity. Following concurrence, the EIS must be filed with EPA.

d. *For EISs originating in regions or centers,* but where authority to approve EIS is retained in headquarters, the region or center shall send the proposed EIS to the appropriate Service or Office Director. The service or office shall send copies to AEE and to AGC for review. After AGC review for legal sufficiency, the Service or Office Director shall transmit two copies to any appropriate element of OST for concurrence, if required, with a request for concurrence within 15 to 30 days, depending on the statement's complexity. Following concurrence, the EIS must be filed with EPA.

e. *All statements involving Section 4(f)* of the DOT Act are subject to AGC review for legal sufficiency in headquarters.

f. *Approval.* After appropriate internal review, a declaration approximately as follows shall be added to the summary. Signature and date blocks shall be added for the concurrence of appropriate offices and approval or disapproval of the approving official:

"After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969."

377. *DOT Concurrence.* a. *The DOT Assistant Secretary for Policy and International Affairs (P)* must concur on EISs for projects in the following categories:

(1) All actions not involving airport development;

(2) Any new airport serving a metropolitan area, construed as a Standard Metropolitan Statistical Area (SMSA);

(3) Any new runway or runway extension for an airport, any part of which is located in an SMSA and is either certificated under Section 612 of the Federal Aviation Act of 1958, as amended, or used by large aircraft (except helicopters) of commercial operators;

(4) Any project to which a Federal, State, or local governmental agency has expressed opposition on environmental grounds; and

(5) Any project for which P requests an opportunity to review and concur in the final statement or for which FAA requests such review and concurrence by P.

b. *Any projects in the above categories* which also fall under Section 4(f) of the DOT Act will require concurrence by the DOT Office of the General Counsel (C) as well as P.

378. *Decisions Reserved to the Secretary.* If an action requires the personal approval of the Secretary or Deputy Secretary pursuant to a request by them or by P or C, a brief memorandum requesting the Secretary's or Deputy Secretary's approval of the action shall accompany the EIS. The memorandum shall have signature lines for the concurrence of the Assistant Secretary for Environment, Safety, and Consumer Affairs, the General Counsel, and the Deputy Secretary (when the Secretary approves), and for the approval of the Secretary or Deputy Secretary, as appropriate.

379. *Availability Pending Approval.* Proposal final statements may be made available to the public and Federal, State, or local agencies pending final approval and filing with EPA, with the concurrence of the responsible official, if they carry notation that the statement is not approved and filed.

380. *Distribution of Approved Environmental Impact Statements.* The originating FAA region, center, or service shall simultaneously distribute the EIS as follows:

a. Five copies to: Environmental Protection Agency, (A–104), 401 M Street, S.W., Washington, D.C. 20460.

b. Five copies to the appropriate regional office of EPA;

c. One copy of AEE to the Service Director;

d. In the event EPA has comments on a EIS, the responsible official shall make

every reasonable effort to resolve conflicts;

e. A copy of the EIS shall also be sent to each Federal, State and local agency, to private organizations which made substantial comments on the draft statement and to individuals who requested a copy of the final statement or who made substantive comment on the draft.

f. One copy to any sponsor, applicant, or grantee;

g. One copy to appropriate state and areawide clearinghouses unless otherwise designated by the governor;

h. Additional copies shall be sent to accessible locations to be made available to the general public, including headquarters and regional offices; state, metropolitan, and regional clearinghouses (unless the governor designates some other distribution point); and local public libraries;

i. Pursuant to CEQ 1506.6, environmental statements, comments received, and underlying documents will be made available to the public without charge to the fullest extent practical or at a reduced charge which is not more than the actual cost of reproducing copies; and

j. After filing the EIS with EPA and after the expiration of the 30-day waiting period, AEE shall send a copy of the EIS to the DOT Library (ATTN: M-491.1).

381. *Referrals to CEQ.* The Council on Environmental Quality may serve as a mediator in interagency disagreements over proposed Federal actions that might cause unsatisfactory environmental effects. (See CEQ 1504.)

a. If a commenting agency determines that an action is environmentally unsatisfactory, the matter may be referred to CEQ.

b. When the responsible official receives a notice of intended referral from the commenting agency, this official shall provide P with a copy of the notice and shall submit the final EIS through AEE to P for concurrence.

c. In the event of referral to CEQ by a commenting agency, the responsible official shall forward a proposed response to AEE within 10 days of referral. The response shall address fully the issues raised in the referral and be supported by evidence. AEE shall coordinate with P and respond to CEQ within 20 days of the referral to CEQ.

382.-389. *Reserved.*

Section 8. Supplemental Actions

390. *Supplemental or Amended Statements.* The responsible official may supplement or amend a DEIS or EIS when substantial changes are made in a proposed action or where significant new information regarding its environmental impact comes to light. A supplemental or amended EIS requires P concurrence if the EIS required P concurrence. Consult CEQ, through AEE and P, with respect to the need for, or desirability of, recirculating the statement—whether DEIS or EIS—for the appropriate period.

391. *Implementation of Commitments in Environmental Statements.* In accordance with CEQ 1505.3, "Mitigation . . . and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency." This section of the CEQ Regulations further specifies actions which the lead agency shall take to implement environmental commitments. The FAA shall take steps as appropriate to the action, through special conditions, funding agreements, contract specifications, preferential arrival and departure procedures, directives, other project review or implementation procedures, and other appropriate follow-up actions that the agency and applicants carry out any actions to minimize adverse environmental effects set forth in the approved statement. Submit any proposed deviation from prescribed action that may reduce protection to the environment to AEE. Submit deviations to P for concurrence, if P concurred in the approved statement.

392. *Limit on Actions.* In accordance with CEQ 1506.1, no action concerning the proposal shall be taken until the responsible office issues the Record of Decision.

393. *Record of Decision.* a. Following the review periods prescribed in CEQ 1506.10, the FAA decisionmaker may make a decision on the Federal action. CEQ 1505.2 requires a Record of Decision (ROD) and specifies information to be included in the record of decision.

b. Any mitigation measures which were made a condition of the approval of the environmental impact statement shall be included in the ROD. Proposed changes in or deletions of mitigation measures which were a condition of approval of the environmental impact statement must be reviewed by the same FAA offices which reviewed the final statement and must be approved by the environmental impact statement approving official.

c. If the responsible official wishes to take an action which was included within the range of alternatives of an approved environmental impact statement but was neither the environmentally preferable alternative or alternatives nor the agency's preferred alternative as identified in the final statement, the decisionmaker must first coordinate a draft ROD for concurrence with the same FAA offices which reviewed the final statement. These offices may concur without comment, may concur on the condition that specific mitigation measures be incorporated in the ROD may request that a supplement to the environmental impact statement be prepared and circulated, or may nonconcur. The responsible official shall not approve the Federal action over a nonconcurrence.

d. If the alternative the responsible official now wishes to take action on involves a special interest (e.g., section 4(f) land, endangered species, wetlands, historic sites, or others), the FAA must first complete any required evaluation and consultation that has not been done, supplementing the original environmental impact statement, prior to taking the action. Supplements to environmental impact statements shall be reviewed and approved in the same manner as the original document and a new ROD prepared and approved.

394. *Public Record.* Relevant environmental documents, comments, and responses are part of the Agency's public record and shall be made available to the public through appropriate Regional, Office or service procedures.

395. *Use of Information.*

a. CEQ 1506.5(c) specifically provides "Nothing . . . is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency."

b. The use of information obtained in the manner set forth above may obviate the need for extensive contractual efforts in preparing an environmental impact statement. It must be cautioned, however, that any information so received may only be used after thorough analysis and acceptability of its contents by the FAA. Further, to the extent that the information represents a significant background paper the names and qualifications of those persons primarily responsible for its preparation together with the identification of persons responsible for particular analyses should be listed for incorporation in the list of preparers of the environmental impact statement (see paragraph 373 of this Order.)

396.-399. *Reserved.*

Chapter 4. Additional Provisions

400. *Review of Environmental Statements Prepared by Other Agencies.* Other Federal, State or local agencies may consult FAA for assistance in analyzing environmental impacts which fall within the agency'a functional area of responsibility. FAA generally should limit itself to providing a competent and cooperative advisory and consultative service on proposals affecting aviation and FAA responsibilites.

a. *Comments* should be organized in a manner consistent with the structure of the draft statement and should identify alternatives or modifications that may enhance environmental quality or avoid or minimize adverse environmental impacts and inaccuracies or omissions.

b. *FAA projects* that are environmentally related to the proposed action should be identified so that interrelationships may be discussed in the final statement.

c. *Environmental monitoring* for which FAA has special expertise may be suggested and encouraged during construction, startup, or operation phases.

d. *Other agencies consulting* with FAA and requesting review of their DEIS should be advised to transmit their EISs to FAA regional offices. The following types of matters, however, should be referred to FAA headquarters for comment:

(1) Actions with national policy implications;

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance;

(3) Legislation or regulations having national impacts of national program proposals;

(4) Projects affecting the transportation of hazardous materials; and

(5) Water resource projects. Refer these projects to the Water Resources Coordinator, U.S. Coast Guard (hereafter G–WS). Refer items (1)–(4) to P. In referring these matters to headquarters, the Regional Office is encouraged to prepare a proposed Departmental response.

e. *Regional Offices should review* DEISs that do not have national implications. Comments should be forwarded directly to the office which the originating agency designates for receipt of comments. If the receiving office believes that another DOT office also has an interest or is in a better position to respond, it should transmit the statement to the other office. If FAA and other DOT administrations comment at the regional level, the Secretarial Representative or his designee may coordinate the comments.

f. *When Appropriate,* the FAA should coordinate a response with Department offices having special expertise in the subject matter.

g. *Comments shall be submitted* within the time limits set forth in the request, unless the office responsible for submitting comments seeks and receives an extension of time. Comments should be concise, and should specify any changes desired either in the action proposed or in the environmental statement or both. Any lengthy analysis should be preceded by a summary of the principal areas of comment, the conclusions, and the recommendations, if any.

h. *Comments shall be distributed as follows:* The original and one copy to the requesting agency, one copy to AEE, one copy to P, one copy to CEQ, and one copy to the Secretarial Representative if a regional office prepared the comment. Requests by the public for copies should be referred to the agency originating the statement.

401. *Quarterly Lists of Environmental Information.* a. By the tenth day following the end of a calendar quarter, each region and Office shall forward to AEE a list of environmental impact statements anticipated or under preparation.

b. Drop from the list EISs for which RODs have been completed.

c. List any major unresolved environmental interagency disagreements.

d. Include in the list FONSIs which:

(1) Were listed previously in reports to AEE as anticipated EISs;

(2) Involve impacts similar to those of other actions for which a statement was prepared; and

(3) Are prepared in response to CEQ requests

e. AEE shall compile these lists, transit them to EPA and P, and make them available to the public.

402. *Emergency Action Procedures.* The CEQ regulations allow modification of requirements in case of a national emergency, a disaster or similar great urgency. The processing times may be reduced or, if the emergency situation warrants, preparation and processing of a DEIS, EIS or FONSI may be abbreviated. Such reduction in processing time should be requested for CEQ only for those projects where the need for immediate action requires processing in other than the normal manner.

403. *Application of Section 102(2)(C) Procedure to Existing Projects and Programs.* The Section 102(2)(C) procedure applies to major Federal actions having a significant effect on the environment even though they arise from projects or program initiated prior to enactment of NEPA on January 1, 1970. In assessing the environmental effect of proceeding with such a project and in evaluating alternatives, consideration shall be given to the status of work and degree of completion. If the project or program is continued, it must, to the extent feasible, be shaped so as to enhance and restore environmental quality, avoid or minimize adverse environmental consequences, and consider environmental consequences not fully evaluated at the outset of the project or program.

404. *Land Acquisition and Construction of Facilities.* Public sponsors, other aviation agencies or private parties have the authority to acquire land or to construct facilities for operation by the FAA without prior approval by the FAA. Such action, if inconsistent with the policies of this order, could prejudice a decision by the FAA on proposed changes in an airport which would use the land thus acquired, or on request for reimbursement for the property, or construction or operation of the facility.

a. *When FAA is notified* or becomes aware of a possibility that such a situation may be occuring, FAA will advise the public sponsor, other aviation agency or private party that:

(1) Such actions must be consistent with pertinent environmental policy as expressed in this order.

(2) The manner in which the particular property was acquired or the facility constructed will be carefully considered by the FAA prior to approval of any future FAA action involving it.

b. *FAA will give particular attention* to its responsibilities under DOT Section 4(f) to insure that a special effort is made to preserve the natural beauty of countryside, public parks, and recreation lands, wildlife and waterfowl refuges, and historic sites. FAA will not approve actions requiring the use of DOT Section 4(f) properties unless there is no feasible and prudent alternative and the program includes all possible planning to minimize harm.

c. *FAA also will give particular attention* to actions involving properties included in or eligible for inclusion in the National Register of Historic Places and the provisions of Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

d. *An action by a sponsor,* other aviation agency or private party which has acquired land or constructed a facility for operation by FAA, but without prior approval by FAA, will be reviewed to determine whether the action was consistent with the policies of this order and has not precluded full and objective consideration of alternatives.

405. *Environmental Impact Statements or Findings of No Significant Impact on Requests From Foreign Sources.* a. Requests for FAA action by a foreign government, manufacturer or operator may fall within criteria requiring preparation of an EIS or FONSI. All initial FAA requests to such a foreign applicant for information which FAA needs to prepare an EIS or FONSI should be forwarded through the civil aviation authority of the applicant's government. Copies of the DEIS, EIS, and notices of any public hearings planned on the proposed action should be furnished to the applicant, the appropriate foreign civil aviation authority, and the Washington embassy of the country in which the applicant is located.

b. Any substantial differences arising in the course of the EIS between the originating FAA organization and a foreign applicant should be referred to AEE which will consult with the Associate Administrator for Policy and International Aviation Affairs to resolve any problems.

406–499. *Reserved.*

Appendix 1. Systems Research, Engineering and Development

1. *General.* This appendix provides guidance and assigns functional responsibilities for the conduct of environmental assessments and the preparation, coordination, executive review, and approval of environmental assessments, EISs and FONSIs which concern Research, Engineering & Development (RE&D) programs of FAA. Documentation of the environmental impact of all actions not excepted by this Order is required.

2. *Environmental Responsibilities.* Functionally responsible officials, Lead Directors of Systems Research and Development Service (ARD), Office of Systems Management (AEM), and NAFEC or their designees (i.e., Division Chief, Branch Chief, Section Chief, Manager, etc.) of Offices or Services will, on a case-by-case basis:

a. Determine consistent with Chapters 2 and 3 of this Order whether a proposed RE&D program action requires an EIS or FONSI; or

b. Determine if RE&D activities are excepted under paragraph 5 below;

c. Prepare, process and distribute appropriate environmental documentation according to Chapter 3 of this Order.

(1) Assure consultation with responsible and expert agencies and organizations and invite their cooperation and comment, and obtain review and approval where indicated or required.

d. Participate with other offices, services and centers in the conduct of assessments and the preparation, processing and evaluation of an EIS or FONSI for major actions involving:

(1) Development of systems with future cumulative, significant environmental impact;

(2) The inclusion into the NAS or NSA of new equipment and techniques developed in RE&D programs;

e. Assure submission to AEE of quarterly list of EISs anticipated or in preparation of RE&D Efforts;

f. Conduct periodic reviews of RE&D actions implementing this order;

h. Assure retention of documentation files by the organizational component having program or subprogram responsibility; and

j. Prepare and transmit to AEE a publicly available record which sets forth reasons for a determination that although an EIS may be required, its preparation is still premature and thus unnecessary. Such a record should be updated when significant new information becomes available.

3. *Environmental Impact Statement or Finding Of No Signicant Impact.* In determining whether RE&D programs and plans which have not been excepted require preparation of an assessment, EIS or FONSI, factors specified in paragraphs 349–366 should be considered, as well as the following factors:

a. The magnitude of Federal investment in the program;

b. The likelihood of widespread application of the technology;

c. The degree of environmental impact which would occur if the technology were widely applied; and

d. The extent to which continued investment is likely to restrict future alternatives.

4. *Actions Subject of Environmental Assessments and Procedures.* The RE&D cycle includes such activities as promulgation of directives, policies, plans, programs, budgets, legislative proposals, system design, test evaluation, specification, demonstration, etc. An environmental assessment is to be conducted and, where appropriate, an EIS or FONSI is to be prepared for implementing actions under the following programs:

a. *Air Traffic Control:*

(1) *System Program #101*

(2) *Runways/Taxiways Program #08*

(3) *Flight Service Station Program #13*

(4) *Technology Program #16*

(5) *Support Program #21*

b. *Navigation:*

(1) *Approach & Landing Systems Program #07*

c. *Aircraft Safety:*

(1) *Environmental Program #20* (Noise/Pollution/Quality)

d. *Selection Orders* introducing new equipments, procedures, techniques products of RE&D into the National Aviation System (NAS) or National Airport System (NSA); and

e. *Plans, Programs* such as the SRDs Technical Program Document (TPD), FAA NAS 10-YEAR PLAN RE&D, and NEW SYSTEM DESIGNS.

5. *Categorical Excluded Actions.* RE&D programs excepted from the requirements for an EIS or FONSI are:

a. *Air Traffic Control* Radar Beacon System (ATCRBS), Program #03; Proximity Warning Indicator/Collision Avoidance System (PWS, CAS) Program #05; Landside/Oceanic Satellites Program #17; New Radar Systems Program #02; New Communication Systems Program #06; Enroute Control Program #12; Navigation Program #04; Terminal/Tower Control Program #14; Flow Control Program #11.

b. *Aviation Weather,* Weather Data Acquisition, Processing Criteria, Accident Prevention and Survival, Program #15;

c. *Aircraft Safety Program #18,* Anti-Hijacking, Flight Safety Criteria;

d. *Aviation Medicine Program #19,* Biomedical Aspects of Design, Personnel Efficiency and Performance;

e. *Policy Analysis,* System Analysis, System Design studies.

6. *Timing of Environmental Procedures.*

a. *General.* An EIS or FONSI should be prepared late enough in the development cycle to contain meaningful information but early enough for analysis of environmental impact effects and alternative courses of action to be significant inputs in the program decision making process.

b. *Specific.* An EIS or FONSI where required should be completed:

(1) *On or before* completion of RE&D and before introduction into the NAS or NSA;

(2) *Prior to,* or with submission for comment to outside organizations of draft standards (RE&D products) or technical data packages per 9500.4; and

(3) *Prior to* submission of draft Orders, Notices, Advisory Circulars to outside organizations for comment.

7. *Mitigating Measures.* Responsible RE&D Directors, or their designees, shall specify in an EIS measures to be taken to mitigate or minimize significant adverse environmental effects. These may include:

a. Selecting alternate actions which most effectively minimize adverse impacts;

b. Conducting field tests in areas least likely to cause significant adverse environmental impact;

c. Locating laboratories and demonstration centers with a view to avoiding adverse environmental impacts; and

d. Minimizing potential adverse effects in the RE&D cycle (design, installation, test, evaluation and specific action).

Appendix 2. Airway Facilities

1. *General.* Facilities and equipment projects; the establishment of new facilities; and maintenance program, ranging from component/equipment modification to major changes in the facilities, may impact the environment. This appendix sets forth environmental procedures to be used regarding airway facilities, the categories of projects which require an EIS or FONSI, and those which are not subject to an EIS or FONSI.

2. *Environmental Responsibilities.*—a. *Regional Airway Facilities Division.* Responsible for conducting an environmental assessment in accordance with paragraph 201, and the preparation, coordination and signing in accordance with Chapter 3 of the EIS or FONSI as appropriate for all assigned F&E and maintenance projects within the region. For projects where commitments to protect the environment are detailed in an EIS or FONSI, the Regional Airways Facilities Division Chief shall include the appropriate statement to implement the commitment in land acquisition or construction design documents.

b. *Headquarters Airway Facilities Service.* Responsible for providing environmental guidance as follows:

(1) It shall complete class EISs or FONSIs where appropriate and provide them to the regions to minimize the need for more extensive assessments.

(2) It is responsible for establishing environmental procedures and guidelines for National Airspace System programs, facilities and housing.

(3) To assist the regions in maintaining uniformity of procedures, it shall provide EIS and FONSI review and coordination.

3. *Environmental Impact Statements or FONSIs.* Environmental assessments should be developed along with economic and technical considerations in the facility siting and design. Careful consideration of the specific site and the effect of aircraft operations are necessary. Where the individual location impact or the operational use of the facility indicates significant environmental impact, an EIS should be prepared and circulated in accordance with this order. Those projects for which a class EIS or FONSI has been filed or excepted do not require further action unless a particular case significantly affects the quality of the human environment and requires the preparation of an EIS.

4. *Projects Subject to Environmental Assessments and Procedures.* The following categories of projects are subject to an environmental assessment and preparation of an EIS or FONSI.

a. Establishment or relocation of facilities such as Air Route Traffic Control Centers (ARTCC), Airport Traffic Control Towers (ATCT), Air Route Surveillance Radars (ARSRs), Beacon Only Sites, and Flight Service Stations (FSS). These facilities may affect the environment because of land or access requirements; the electronic emissions generated by its operation; the impact on water and sewerage facilities, power distribution facilities, rainfall runoff and traffic flow from public roadways; and the impact on personnel in a given locale;

b. Establishment or relocation of facilities used for communications and enroute navigation such as the VHF Omni Range (VOR) or with TACAN (VORTAC), Remote Communications Air Ground (RCAG), and Radar Microwave links (RML). The environmwntal impact of these facilities normally results from providing access to the remote facility and constructing the facility itself;

c. Establishment or relocation of Instrument Landing or Microwave Landing Systems (ILS or MLS), Approach Light Systems (ALS), and Runway End Identifier Lights (REILS). These facilities may be the subject of environmental controversy because of the impact of a change in operational use and the location of certain elements off airports;

d. Establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems normally should be assessed because of their location, and impact on community land use planning;

e. An environmental assessment report should be prepared by the sponsor of any non-Federal facilities, such as an ILS or TVOR, for which acceptance by FAA for maintenance and operation is prearranged or anticipated. A copy of this report should be transmitted to the appropriate FAA regional office prior to the initiation of the FAA action.

f. The following projects have been determined to have no significant impact on the quality of the human environment have class FONSIs filed and normally do not require further environmental consideration.

(1) Installation on airports of Visual Approach Slope Indicators (VASI).

(2) Installation or replacement of engine generators or powerplants from 5 KW to 175 KW used in emergencies when commercial power fails.

(3) Installation of Runway Visual Range (RVR) equipment on airports.

(4) Construction of Single Frequency Outlets (SFO) to provide air-to-ground communication between pilots of general aviation aircraft and personnel in FSS's.

(5) Construction of Remote Transmitter/Receiver (RT/R) facilities to supplement existing communications channels installed in the ATCT or FSS.

(6) Installation of Wind Sensing equipment, generally installed on airports.

5. *Categorical Excluded Projects.* a. Upgrading of building electrical systems or maintenance to existing facilities (including painting, replacement of siding, etc.);

b. Minor expansion of facilities including the addition of communication channels where personnel complements are minimal and which require no additional land, and where expansion is due to remodeling of space in current quarters or existing buildings;

c. Upgrading of facilities to improve their operational capacity, e.g.,

(1) Existing runway approach lighting installations;

(2) Conversion of VOR to VORTAC; and

(3) Conversion of ILS to Category II or III standards;

d. Wind and other weather instruments located on airports;

e. Demolition and removal of buildings and structures, except where they are of historical, archaeological and architectural significance as officially designated by Federal, State or local government;

f. Replacement or reconstruction of a structure or facility with a new one of

substantially the same size and purpose, where location will be on the same site as the existing building/facility;

g. Water, sewage, electrical, gas or other utility extension of temporary duration to serve construction;

h. New gardening or landscaping, or the maintenance of existing landscape;

i. Accessory onsite structures including storage buildings, garages, small parking areas, and signs and fences;

j. Grading on land with a slope of less than 10 percent, except where located near waterways in any wetland in an officially designated (by Federal, State, or local government agency) scenic area, or in officially mapped areas of severe geologic hazard;

k. Filling of earth into previously excavated land with material compatible with the natural features of the site;

l. Minor trenching and backfilling where the surface is restored and the excavated material is protected against wash and runoffs during the construction period;

m. Replacement of power and control cables for facilities, such as ALS, Airport Surveillance Radar (ASR), ILS and RTR;

n. Repairs and resurfacing of existing access to remote facilities such as ARSR, RCAG, RML, and VORTACs;

o. Installation of equipment on airports, such as Cloud Height Indicators (CHI) and Hygrothermometers;

p. Installation of equipment within a facility or on an airport that provides for modernization or enhancement of the service provided by that facility, such as ASR, Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), beacon system on an existing radar and test sets.

6. *Timing of Environmental Procedures.* a. The environmental impact of proposed projects should be considered during the budgetary process. It is not necessary that EISs or FONSIs be filed prior to budgeting for a given project. However, where significant, environmentally adverse project impacts are known or anticipated, the project justification should identify all pertinent factors to enable a determination of whether to include the project in the budget or to consider alternatives.

b. Environmental assessments should be inititated with the beginning of design or engineering effort for the project.

c. No Procurement Request for construction will be submitted to the Procurement Office for action until the EIS or FONSI, if required, has been completed and filed.

d. If the project requires the acquiring of property interests, no formal contact with the property owner for the purpose of acquiring these interests, including any offer, should be made prior to filing a FEIS or FONSI, except for:

(1) Emergency situations;

(2) Obtaining rights-of-entry for such purposes as preparation for site testing, obtaining data, property surveys, etc; and

(3) Those cases where the review process indicates that the proposed site warrants further engineering study and requires an EIS. It may be in the agency's interest to obtain an option or other document to assure the availability of the property pending the filing of the FEIS. In this event, the DEIS should state that the FAA has entered into an option and the reason for the option; that alternate sites are being considered through the EIS process; and that a decision to exercise the option will not be made until completion of the review and filing of the FEIS.

7. *Site Selection.* When a site has been tentatively selected, the region should investigate such things as:

a. Impact of the facility/system on nearby residential areas.

b. Impact of grading required to accommodate the facility.

c. Impact on local land-use patterns and plans.

d. Impact on wildlife in the area.

e. Impact on other variables.

Note.—The results of the analysis of the foregoing variables should be integrated with the information contained in the facility descriptor, and an endorsement added to complete the EIS or FONSI as appropriate.

8. *Environmental Descriptors.*—a. *General.* The following environmental descriptors for those NAS facilities/systems most commonly constructed are provided for use in preparing an EIS or FONSI. These descriptors are for the facility/system and do not describe or include the impact with respect to specific geographical locations of individual facilities or systems.

b. *Descriptors.* The following listed descriptors are provided:

(1) Air Route Surveillance Radar (ARSR) System.

(2) Air Traffic Control Radar Beacon (ATCRB) System.

(3) Airport Surveillance Radar (ASR).

(4) Height Finder Radar (HFR) System.

(5) Instrument Landing System with an Approach Light System (ILS/ALS).

(6) Runway End Identifier Light (REIL).

(7) Air Traffic Control Tower (ATCT).

(8) VHF Omnidirectional Range/Tactical Navigation (VORTAC) Facility.

(9) Remote Communications Air/Grounds (RCAG) Facility.

(10) Radar Microwave Link (RML) System.

c. *Environmental Descriptor of an Air Route Surveillance Radar System (ARSR).* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the environmental impact of the standard ARSR. It does not include the impact with respect to specific geographical locations of individual systems and is not intended to foreclose consideration of the environmental effect of an ARSR upon a specific geographical area.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned Facilites and Equipment (F&E) and maintenance projects within the regions, other than those projects for which a class action negative declaration (CAND) has been prepared or has been exempt by this order. An environmental assessment should be made to determine whether the impact of the action is significant and the preparation of an environmental impact statement (EIS) or negative declaration (ND) is appropriate. These assessments shall cover all factors relating to the siting of the facility increases or decreases in operational usage, noise impacts, the impact of light emissions, and other known impacts on the environment. The establishment or relocation of an ARSR system is among the projects that require an EIS or ND. The assessment should cover the environmental review procedures set forth in the body of this order as well as in this appendix.

(c) The ARSR is the major tool used in providing the safe and expeditious flow of en route air traffic, which is controlled from air route traffic control centers (ARTCC). The ARSR is designed to provide a visual aid to the air traffic controller in establishing the position of the aircraft within his control area and its position in relation to other aircraft in the vicinity. Each ARTCC relies on the information remoted to it from one or more strategically located radar antennas. Ideally, the coverage of adjacent radar systems will overlap to provide the air traffic controller with a positive continuous visual presentation of an aircraft's flight path. An air traffic control radar beacon (ATCRB), when

collocated with the ARSR, will provide pertinent information to the controller in the form of alphanumerics, such as the aircraft identity, its altitude, air speed, etc. This beacon system may also be sited independently of the radar. Although individually sited, the environmental impact of each system remains the same as that of the combined systems. These radar systems are designed to detect aircraft up to a range of 200 nautical miles and altitudes up to 60,000 feet.

(2) *Description.* (a) *ARSR.* The radar system and its data transfer equipment are housed either in transportable modules or permanent structures. All ARSR and military long-range radar are similar in nature and impact. The housings are arranged at the site to blend harmoniously with the local surroundings. Determining the location of a long-range radar is a complex process that involves both technical and environmental considerations. Initially, the siting effort is based upon the technical coverage requirements and the capability of the electronic equipment. The scanning range of the long-range radar equipment used by the FAA is about 200 nautical miles; however, due to limitation imposed by the curvature of the earth and the need for overlapping coverage, the maximum practical limitation between antenna sites is about 110 nautical miles. Since a loss of all radar data exists directly over the antenna, the siting must avoid being under airway routes, major holding patterns, and terminal arrival and departure control areas. The topography of the distant horizon must not block the line-of-sight between the antenna and all points on the airway route structure to the minimum altitude that controlled en route aircraft will operate. The topography of near-in natural and man-made objects must not cause undue electronic reflections that would adversely affect the data transmitted to the ARTCC. The ARSR complex houses data transfer equipment, radar transmitters and receivers, and the engine generator. Adjacent to the housing modules is an antenna tower, 25 to 75 feet in height, which supports the data acquisition antenna and its associated drive mechanism. A geodesic dome, electronically transparent and about 55 to 65 feet in diameter, is used to protect the antenna system from the elements and permits smooth rotation in high winds. The antenna reflector which rotates at five revolutions per minute (rpm), measures about 23 feet high and 42 feet wide. The ARSR is a fixed base, pulsed, dual channel radar system. Dualization of electronic equipment insures maximum reliability of the system. In all of the ARSR, either radar channel may be operated independently of the other channel and either may be operated as the master or slave.

(b) *Description of Components.*

1 ARSR. The ARSR–3 transmitter generates short pulses of rf energy radiation. The rf pulses are amplified by a Klystron rf amplifier to approximately five megawatts (MW) of peak power which is emitted from the antenna system. The ARSR–1 and ARSR–2 systems utilize a magnetron transmitter. The magnetron is pulsed and the output rf pulse is amplified by an amplitron power amplifier to approximately 4 to 5 MW of peak power which is emitted from the antenna system. Radar coverage is provided throughout 360 degrees with continuous antenna rotation. Transmitted energy is reflected from radar targets back to the antenna. The reflected energy received at the antenna is fed to the radar receiver where it is converted to video information for display on a cathode-ray tube (crt). The display presentation on the display of selected navigational references for use by the controller.

2 ATCRB. The beacon equipment is made up of the following major components: (1) interrogator/receiver unit; (2) antennas-directional and omni; (3) defruiter; and (4) decoders. When a beacon system is used in conjunction with a primary radar (ARSR), the beacon and radar targets must be correlated in range and azimuth so there will be a simultaneous presentation. The correlation is accomplished by the beacon antenna being an integral part of the ARSR antenna and the beacon system timing related to the pulse repetition frequency of the primary radar equipment.

(3) *System Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Environmental Systems. In each of these building modules, an air-conditioner or ventilating system may be installed. Either system meets the criteria in Specification FAA–C–2256a, Temperature and Humidity Control Equipment.

2 Electronic Equipment.

a The noise of the associated electronic system in the building is measured in decibels (dB) at a point of highest noise level at a distance of three feet from the exterior surface of the equipment. The noise level shall not exceed the criteria of Specification FAA–G–2100/lb, Electronic Equipment, General Requirments, as described in table 1 of this appendix.

Table 1.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	9600
Sound Pressure Level dB Re. 0.0002 Microbar.							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour work day defined in subpart G, section 1910.95, of the occupational safety and health standards.

3 Standby Power. Diesel engine generators ranging in size from 30 to 300 kW may be provided for standby power. The greatest noise produced by them is within the engine generator room. Since occupational health standards have been established and the fact that maintenance personnel attending these units are in the engine generator room for short periods of time, no damaging effect to their hearing has been experienced to date. The characteristics of the engine generator are as described in the CAND for engine generators.

(b) *Fuel Emissions.* In order to have an adequate energy source for the detecting and control of air traffic, engine generators provide the standby power for the system in the event of a commercial power failure. The only operation of this generator would be during such failures and during testing. Such testing of engine generators 300 kW and smaller consist of operating one hour per week and three hours at the end of each quarter. All fuel tank fill pipes would meet HEW standards to prevent vapor emissions during refueling. See CAND for engine generators, for further details.

(c) *Light Emissions.* None, except for obstruction lighting.

(d) *Electronic Emissions.*

1 Radar Transmitter.

a Frequency—L band—1250 to 1350 MHz.

b Peak Power—5 NW.

c Pulse Repetition Frequency (prf).

(i) 300 to 400 pulses per second (pps).

(ii) In staggered mode 310 to 360 pps.

d Duty Cycle—0.0006 to 0.0008.

e The frequencies are within those assigned to the FAA by the Office of Telecommunications Policy, Federal Communications Commission.

2 Health Hazards.

a The hazardous radiation area of the ARSR is defined as the region between the antenna and the point on

the main axis where the power density equals 10mW/cm². This point exists at 200 feet in front of the antenna. Beyond this area there is no hazardous effect on personnel. Because of equipment design features (safety interlocks) and facility siting criteria, the critical area of radiation hazard is inaccessible to personnel. See pictorial view of critical radiation areas. (Figure 1).

b FAA Handbook 3910.3, Radiation Health Hazards and Protection, defines the health effects (hazards) and the greatest concern to personnel as the thermal effect from the antenna. To protect maintenance personnel, safety interlocks preclude access to this area when the ARSR is operating. In addition, x-radiation hazards exists in the transmitter cabinet, therefore, safety interlocks and appropriate shielding are provided to protect maintenance personnel in the area.

(e) *Construction Impacts.* The impacts associated with the ARSR during the construction period are limited and short term in nature. Construction includes the use of power-operated excavation equipment and vehicles which produce minor fossil fuel emissions. Construction activity is normally limited to site preparation of the site, excavation for the tower and shelter foundation, grading and paving of the parking plot and access road surfaces. Normal safeguards to minimize erosion are untilized. Assessors should follow the guidelines established in paragraph 326 of this order for consideration of the impact on water quality, water resources, and on existing water tables.

(f) *Site Particular Items for Environmental Consideration.*

1 As local conditions warrant, ancillary equipment will also be provided to support the ARSR, such as an access road or various utilities (water supply, waste disposal system, telephone, and power). At some facilities, mostly in the northern areas, a vehicle for use in snow or muddy terrain may be required. If so, a garage at the tower end of the access road plus additional parking facilities may be required. The assessor is required to consider the impacts of this construction as well as compliance with this order.

2 When an ARSR site is selected, there is a need for assessing any possible social impacts (paragraph 327) and induced socio-economic effects (paragraph 328). Community continuity and land-use compatibility should not be overlooked. In addition to NEPA, other Federal laws and directives require that the FAA consider environmental and other effects of various actions taken by the agency.

3 Among other considerations, the following areas should be considered during the site selection phase as to their degree of significance:

a Location in relation to residential areas.

b Short-term construction impacts.

c Access road availability.

d Effects on existing topography.

e Division or disruption of community (long and short term).

f Significant aesthetic or visual impacts.

g Effect on areas of cultural, historical, or scenic interest.

h Effect on natural resources.

i Impact on recreational areas.

j Pattern of behavior of any wildlife species or interference with wildlife breeding.

k Possible contamination of public water supply, treatment facility, or distribution system.

l Frequency and duration of noise creation due to increase in vehicular traffic.

APPENDIX 2

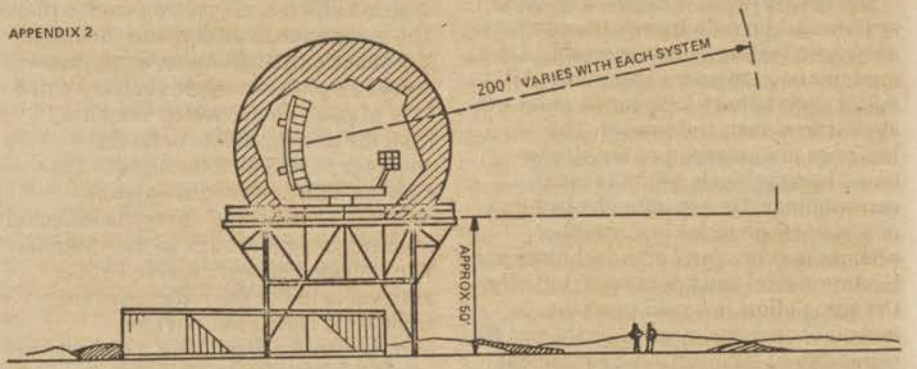

FIGURE 1. TYPICAL ARSR FACILITY

d. *Environmental Descriptor of an Air Traffic Control Radar Beacon (ATCRB) System.*

(1) *Introduction.* (a) This descriptor reflects the technical characteristics of the environmental impact of the standard ATCRB. It does not include the impact with respect to specific geographical locations of individual systems and is not intended to foreclose consideration of the environmental effect of a beacon upon a specific geographical area.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment should be made to determined whether the impact of the action is significant and the preparation of an EIS to cover all factors relating to the siting of the facility, increases or decreases in operational usage, noise impacts, the impact of light emissions, and other known impacts on the environment. The establishment or relocation of an ATCRB is among the projects that require an EIS or ND.

(c) The radar beacon system is a major tool in providing a safe and expeditious flow of air traffic. The ATCRB in normal air traffic control use is slaved (synchronized or timed) to either an en route or terminal primary radar. However, at ATCRB en route facilities, only the ATCRB (not the primary radar) is used for air traffic control. In actual cooperation, the ATCRB interrogator (consisting of a transmitter and receiver) transmits an interrogation signal to the aircraft's transponder (receiver and transmitter) which receives, processes, and transmits a reply signal; the reply signal is received and processed by the interrogator's receiver and other special processing equipment and displayed to the air traffic controller. The reply signals provide the aircraft's identity and altitude (both are displayed in alphanumerics) in addition to its range and azimuth. The ATCRB is collected with the primary radar or is operated independently, the environmental impact of the combined systems remain the same as that of the individual system.

(2) *Description.*

(a) *Description of System.* 1 *ATCRB.* The beacon system and its data transfer equipment are housed either in transportable modules or permanent structures. The housings are arranged at the site to blend harmoniously with the local surroundings. The scanning range of the beacon equipment used by the FAA is in excess of 200 nautical miles at 60,000 feet in altitude. Since a loss of all beacon data exists directly over the antenna, the siting must avoid being under airway routes, major holding patterns, and terminal arrival and departure control areas. The topography of the distant horizon must not block the line-of-sight between the antenna and all points on the airway route structure to the minimum altitude that controlled aircraft will operate. The topography of near-in natural and man-made objects must not cause undue electronic reflections that would adversely affect the data transmitted to the ARTCC. The ATCRB complex houses data transfer equipment, beacon interrogator (transmitter and receiver), and the engine generator. Adjacent to the housing modules is an antenna tower not greater than 77 feet in height, which supports the beacon interrogator antenna and its associated drive mechanism. The antenna which rotates at five rpm measures about 5 feet high and 28 feet wide. Dualization of electronic equipment insures maximum reliability of the system. In all of the beacon systems, either channel may be operated independently (but not simultaneously) of the other channel and either may be operated as the master or slave.

2 Equipment.

a The beacon facility equipment is made up of the following major components: (1) ATCRBS antennas-directional; (2) ATCRBS antenna pedestal and control system; (3) ATCBI-5 (transmitter-receiver); (4) digital defruiter; (5) common digitizer; and (6) MODEM.

b The function of the beacon equipment is to interrogate transponder equipped aircraft and provide information for operational use. This action is accomplished by the interrogation transmitting two rf pulses spaced from 3 to 21 microseconds apart which interrogates the aircraft transponder and detects the coded rf pulses which are transmitted by the aircraft transponder The detected pulses are then sent as reply signals through the defruiter to the common digitizer where they are processed and the information provided through the MODEM and telephone lines to the radar displays for operational use, as the aircraft's range, azimuth, identification, altitude, and other pertinent data, such as emergencies pertaining to the aircraft are displayed.

c In addition to the two interrogation rf pulses, (P-1 and P-2), there is a side-lobe suppression (SLS) pulse (P-2) spaced 2.0 microseconds after the first interrogation pulse (P-1). The SLS pulse is transmitted through an omnidirectional antenna to prevent the aircraft transponder from replying to signals generated by the side and back lobes of the directional antenna.

d When a beacon system is used in conjunction with a primary radar, the beacon and radar targets must be correlated in range and azimuth so there will be a simultaneous presentation. The correlation is accomplished by the beacon antenna being attached to the top of the radar antenna and the beacon system timing related to the pulse repetition frequency of the primary radar equipment.

(3) *System Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Environmental Systems. In each of these building modules, an air-conditioner or ventilating system may be installed. Either system meets the criteria in Specification FAA-C-2256a.

2 Electronic Equipment.

a The noise of the associated electronic system in the building is measured in decibels (dB) at a point of highest noise level at a distance of three feet from the exterior surface of the equipment. The noise level shall not exceed the criteria of Specification FAA-G-2100/lb, Electronic Equipment, General Requirements, as described in table 2 of this appendix.

Table 2.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	9600
Sound Pressure Level dB Re. 0.0002 Microbar							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour workday defined in subpart G, section 1910.95, of the occupational safety and health standards.

3 Standby Power. Since occupational health standards have been established and the fact that maintenance personnel attending these units are in the engine generator room for short periods of time, no damaging effect to their hearing has been experienced to date. The characteristics of the engine generator are as described in the CAND for engine generators.

(b) *Fuel Emissions.* In order to have an adequate energy source for the detecting and control of air traffic, engine generators provide the standby power for the system in the event of a commercial power failure. The only operation of this generator would be during such failures and during testing. Such testing of 30 kW engine generators consists of operating one hour per week and three hours at the end of each quarter. All fuel tank fill pipes would meet HEW standards to prevent vapor emissions during refueling. See CAND for engine generators for further details.

(c) *Light Emissions.* None, except for obstruction lighting.

(d) *Electronic Emissions.*

1 Beacon Transmitter.

a Frequency.

(i) Interrogator—1030 MHz.

(ii) Transponder—1090 MHz.

b Pulse Width—0.8 us.

c Power Putput—35 dBw (max)—3162 W.

d Pulse Spacing—3.0 to 21.0 $\pm$ 0.1 us.

e PRF—425 pps (max).

f All of the transmitter characteristics are within the U.S. National Aviation Standard for the Mark X (SIF) Air Traffic Control Radar Beacon System (ATCRBS) Characteristics, DOT Order 1010.51A.

2 Health Hazards. There are no hazardous areas which have an effect on personnel. Because of equipment design features (safety interlocks) and facility siting criteria, the critical area of radiation hazard is inaccessible. The health effects (hazards), as defined in Handbook 3910.3, states that the greatest concern to personnel is the thermal effect. To protect maintenance personnel, safety interlocks preclude access to any of these areas when the beacon is operating.

(e) *Construction Impacts.* The impacts associated with the beacon during the construction period are limited and short term in nature. Construction includes the use of power-operated excavation equipment and vehicles which produce minor fossil fuel emissions. Construction activity is normally limited to site preparation of the site, excavation for the tower and shelter foundation, and grading and paving of the parking lot and access road surfaces. Normal safeguards to minimize erosion are utilized. Assessors should follow the guidelines established

in paragraph 326 of this order for consideration of the impact on water quality, water resources, and on existing water tables.

(f) *Site Particular Items for Enivronmental Consideration.*

1 As local conditions warrant, additional construction or equipment installation will be required to support the beacon system, such as an access road or various utilities (water supply, waste disposal system, telephone, and power). The assessor is required to consider the impacts of this construction as well, in compliance with this order.

2 When a beacon site is selected, there is a need for assessing any possible social impacts (paragraph 327) and induced socio-economic effects (paragraph 328). Community continuity and land-use compatibility should not be overlooked. In addition of NEPA, other Federal laws and directives require that the FAA consider environmental and other effects of various actions taken by the agency.

3 Among other considerations, the following areas should be considered during the site selection phase, as to their degree of significance.

a Location in relation to residential areas.

b Short-term construction impacts.

c Access road availability.

d Effects on existing topography.

e Division or disruption of community (long and short term).

f Significant aesthetic or visual impacts.

g Effect on areas of cultural, historical, or scenic interest.

h Effect on natural resources.

i Impact on recreational areas.

j Pattern of behavior of any wildlife species or interference with wildlife breeding.

k Possible contamination of public water supply, treatment facility, or distriubution system.

l Frequency and duration of noise creation due to increase in vehicular traffic.

e. *Environmental Descriptor of an Airport Surveillance Radar (ASR).*

(1) *Introduction.* (a) This descriptor reflects the technical characteristis and the environmental impact of the ASR. It does not include the impact with respect to specific geographical locations or individual sites and is not intended to foreclose considerations of the environmental effect of a specific ASR installation.

(b) This order sets forth the procedures and policy for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility and other known impacts on the environment. The establishment or relocation of an ASR are among the projects that require an EIS or ND. The assessment should cover the environmental review procedures set forth in this order.

(c) The ASR is designed to detect aircraft up to a range of 60 nautical miles at altitudes up to 40,000 feet. This detected data is remoted to the terminal radar approach control (TRACON) facility and/or the airport traffic control tower (ATCT) where it provides a visual aid to the air traffic controller. The data is displayed on a crt which depicts the relative position of all aircraft in the area controlled.

(d) An ATCRB, which shares the ASR and antenna support structure, is normally collocated with the ASR to provide additional information, such as the aircraft's identity and its altitude. For the majority of instances, this combined facility is located on existing airport property.

(2) *Description.* (a) The ASR–4 through ASR–8 facilities are housed in either transportable fiberglass modules, prefabricated metal, or concrete masonry buildings. If housed in the modular complex, ASR–7 and ASR–8, the engine generator (50 kW powerplant), which provides backup power during power outages, is housed in a separate 8 foot by 21 foot van. In the concrete masonry and prefabricated facilities, the engine generator is housed internally. Adjoining the electronic equipment structure, which houses the radar transmitter, receiver, and beacon interrogator, and the engine generator, is an antenna support tower which may vary from 17 feet to 77 feet in height. The data acquisition, radar, and beacon antennas and their associated drive mechanism are mounted on a platform at the top of the tower. The radar antenna reflector measures about 9 feet high and 18 feet wide and has the beacon antenna mounted on top of the radar antenna which measures 20 inches high and 27 feet long. These antennas are continuously rotated as a single unit at 12 to 15 rpm.

(b) *Description of System Components.*

1 ASR Characteristics.

a The ASR is a fixed-based, pulsed, dual channel radar system. Channel dualization insures maximum reliability of the system. The normal operating mode of the ASR–8 system is diversity operation with range gating between two antenna patterns. Diversity operation improves target detectability. Although diversity is the normal ASR–8 mode of operation, all coverage requirements are met while operating in the simplex mode (one radar channel in use). Either radar channel may be operated as the master or slave. The ASR–4 through ASR–6 and some ASR–7 (simplex) have not been provided the diversity mode of operation.

b The ASR transmitter generates short pulses of rf energy radiation which are emitted from the antenna system with coverage provided throughout a 360 degree radius with continuous antenna rotation. Transmitted energy is reflected from radar targets back to the antenna. The reflected energy received at the antenna is fed to the radar receiver which is converted to video information for display on the crt. The display provides the air traffic controller with necessary video target position. Video mapping, which is generated in the radar equipment room, provides map-typed presentation on the display of selected navigational references for use by the controller.

c Either landlines or government-owned radar microwave link systems are used to transfer the remote radar video and antenna position information to the TRACON room.

2 ATCRB Characteristics.

a The radar beacon interrogator/receiver is not part of the primary radar; but it is an integral part of the total ASR system. The beacon equipment is made up of the following major components: (1) Transmitter/receiver unit; (2) antenna-directional and omni; (3) defruiter; and (4) decoder/automated processors (ARTS II and III). This equipment interrogates transponder equipped aircraft and provides data for operational use, such as range, azimuth, identification, altitude, and other pertinent data such as emergencies pertaining to the aircraft. This action is accomplished by transmitting two rf pulses spaced from 3 to 21 microseconds apart which interrogates the aircraft transponder and detects the coded rf pulses which are transmitted by the aircraft transponder. The detected pulses are then sent as reply signals through the defruiter to the decoders/automated processors where they are

processed and the information provided to the radar displays for operational use.

b In addition to the two interrogation rf pulses, another pulse spaced two microseconds after the first interrogation pulse is transmitted through a omnidirectional antenna to suppress the transponder when the aircraft is within the side lobes of the directional antenna.

c When a beacon system is used in conjunction with a primary radar (ASR), the beacon and radar targets must be coincident in range and azimuth so that there will be a simultaneous presentation. The correction is accomplished by the beacon antenna being attached to the top of the ASR antenna and the beacon system timing synchronized by the pulse repetition frequency of the primary radar equipment.

(3) *System Environmental Impacts (Internal).* (a) *Noise Emissions—Environmental Systems.* In each of these buildings, an air-conditioner or a ventilating system may be installed.

(b) *Fossil Fuel Emissions.* In order to have an adequate energy source for the detection and control of air traffic, engine generators provide the standby power for the system in the event of a commercial power failure. The only operation of this generator would be during such failures and during testing. Such testing of engine generators 30 kW and smaller consists of operating one hour per week and three hours at the end of each quarter. All fuel tank fill pipes must be in accordance with HEW standards to prevent vapor emissions during refueling. See CAND for engine generators for further details.

(c) *Light Emissions.* None, except for obstruction and area lighting.

(d) *Electronic Emissions.*

1 Radar Transmitter.

a Frequency. S band—2700 to 2900 MHz.

b Average Power. 2.8 kW (ASR–8)—ASR–4 through 7 (simplex)—430 W—ASR–7 duplex—860 W.

c Pulse Repetition Frequency (prf). 1030 average.

d Duty Cycle. .001.

e Antenna Gain. 34 dB.

2 Beacon Transmitter.

a Frequency.

(i) Interrogator. 1030 MHz.

(ii) Transponder. 1090 MHz.

b Pulse Width. 0.8 us.

c Power Output. 300 to 400 watts peak.

d PRF. 425 pps (maximum).

e Antenna Gain. 21 dB.

f These frequencies are within those assigned to the FAA by the Office of Telecommunications Policy, Federal Communications Commission.

3 Health Hazards. Handbook 3910.3 defines the health effects (hazards) and the greatest concern to personnel as the thermal effect from the antenna. In light of present medical knowledge, the maximum permissible power density in the United States is defined as 10 milliwatts per square centimeter (10 mW/cm^2) for either continuous or intermittent exposure for any period of time. This figure is an average power level since thermal effects depend upon average and not peak power levels. All areas in which the microwave power density are in excess of 10 mW/cm^2 shall be considered hazardous. The hazardous area of the ASR is defined as the region between the antenna and the feedhorn where the power density equals 10 mW/cm^2. Power density can exceed 10 mW/cm^2 in the main beam of the ASR–4 through simplex ASR–7 up to 42 feet away from the antenna. In the diversity ASR–7, the safe level can be exceeded up to 59 feet from the antenna. The ASR–8 can exceed the safe level up to 106 feet from the antenna. See Figure 1. To protect maintenance personnel, safety interlocks preclude access to this area when the ASR is operating. On the ASR–8, x-radiation hazard exists around the klystron in the transmitter cabinet, therefore, safety interlocks and appropriate shielding are provided to protect maintenance personnel in the area. Also, procedures are provided for handling, storage, decontamination, and disposal of radioactive electron tubes. There is no evidence on record that birds have been harmed when flying near any of the existing ASR.

(e) *Construction Impact.* The impacts associated with the construction of the ASR are of limited duration. Noise and fossil fuel emissions from power-operated construction equipment, trucks, and other vehicles can be anticipated, but have been previously assessed as having minimal impact on the environment because of the short duration and limited amounts of emission. This effort will consist of site preparation, service drive or access road, soil sterilization, and foundation placement for an erection of buildings and antenna support structures.

(f) *Site Particular Items for Environmental Consideration.*

1 As local conditions warrant, ancillary construction will also be provided to support the ASR, such as access roads and utilities. The assessment is required to include the impacts of this construction and/or land acquisition as well, when an ASR is located off the airport in compliance with this order.

2 If new land acquisition is the case, then the assessment must be made with reference to paragraphs 327, 328, 329, 330, 332, and 333 of this order. Community continuity and land-use compatibility should not be overlooked. In addition to NEPA, other Federal laws and directives require that FAA consider environmental and other effects of various actions taken by the agency.

3 An analysis of the impact of the system and the various elements described above suggests that there are no adverse environmental effects for which safeguards have not been provided. The following areas should be considered during the site selection phase as to their potential environmental impact.

APPENDIX 2

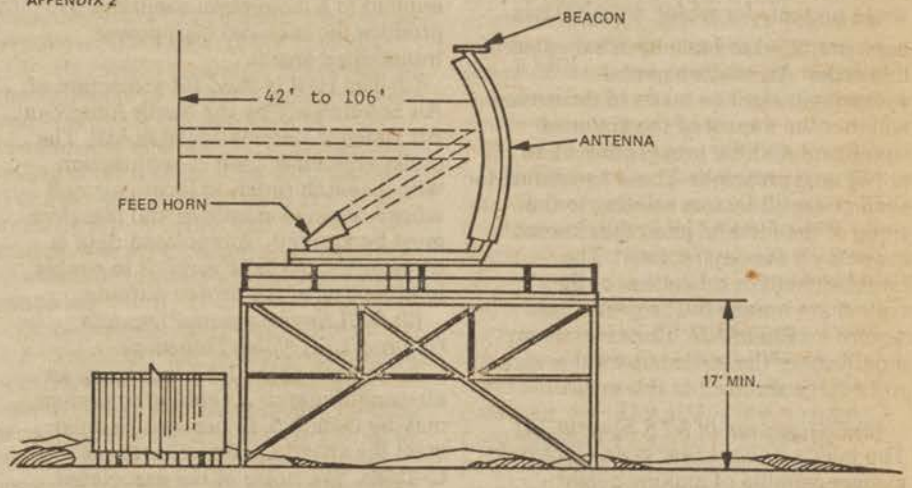

FIGURE 1. TYPICAL ASR FACILITY

a Location in relation to residential areas.

b Short term construction impacts.

c Access road availability.

d Effects on existing topography.

e Division or disruption of community (long and short term).

f Significant aesthetic or visual impacts.

g Effect on areas of cultural, historical, or scenic interest.

h Effect on natural resources.

i Impact on recreational areas.

j Pattern of behavior of any wildlife species or interference with wildlife breeding.

k Possible contamination of public water supply, treatment facility, or distribution system.

l Frequency and duration of noise creation due to increase in vehicular traffic.

f. *Environmental Descriptor of a Height Finder Radar (HFR) System AN/FPS–6.*

(1) *Introduction.* (a) This descriptor reflects the technical characteristics and the normal environmental impact of an HFR AN/FPS–6 U.S. military system. It does not include the impact with respect to specific geographical locations or individual sites and is not intended to foreclose consideration of the environmental effect of a specific HFR installation.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, and other known impacts on the environment. The establishment or relocation of the system are among the projects that require an EIS or ND. The assessment should cover the environmental review procedures set forth in this order.

(2) *Description of HFR System.* (a) The height finder radar is an electronic system capable of making height determinations of aircraft targets flying within the elevation-angle limits of −2 and +32 degrees for any azimuth throughout 360 degrees. The system has a maximum slant-range capability of 200 nautical miles and a maximum height capability of 75,000 feet. The height data obtained is remoted to a military regional operation control center (ROCC). At the ROCC, the detected height data provides a computer readout of the aircraft altitude in the coverage area, for use in the control of aircraft interceptors.

(b) The HFR is collocated at a joint-use site (FAA–USAF) with its data acquisition and transfer system housed in an arctic-type enclosed tower and the ARSR–3 prefabricated type building. The ARSR–3 building and tower complex at the site is blended harmoniously with the local environment and presents an attractive light-commerical appearance. The artic tower, approximately 55 feet diameter at the base, 62 feet diameter at the platform level, supports the height finder antenna and its associated drive mechanism. A geodisic dome, approximately 55 feet in diameter, is used to protect the antenna system from the elements and permits smooth rotation in high winds. The elevation drive of the antenna control system can be stopped or operated either at a slow rate (20 nods per minute) or a fast rate (30 nods per minute).

(c) The HFR transmitter generates short pluses of rf energy. A single modulator, capable of producing 2-microsecond pulses at a nominal repetition rate of 360 pps, is synchronized by system trigger pulses from the associated search radar. The modulator is energized by its regulated high-voltage power supply. The modulator pulses are delivered to the magnetron assembly where, after passing through, a pulse transformer is applied to a magnetron oscillator to produce the required high-power transmitted signal.

(d) The HFR is used for protection of Air Sovereignty by the North American Air Defense Command (NORAD). The data gathered is used in conjunction with a search radar, to locate aircraft whose origin is unknown and therefore must be verified. Interpolated data is transmitted to USAF aircraft to enable interception at the proper altitude.

(3) *HFR Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 In each of the HFR buildings, an air-conditioner or a ventilating system may be installed. Either system must meet the criteria in Specification FAA–C–2256a. The noise of the associated electronic system in the building is measured at a point of highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/1b, Electronic Equipment, General Requirements, Part I, Basic Requirements for all Equipments. This criteria is described in table 3 of this appendix.

Table 3.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	10000
Sound Pressure Level dB Re. 0.0002 Microbar							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67

2 The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour workday defined in subpart G, section 1910.95, of the occupational safety and health standards.

(b) *Fossil Fuel Emissions.* None.

(c) *Light Emissions.* None, except for obstruction area lighting if installed.

(d) *Electronic Emissions.*

1 HFR Radar Transmitter.

2 Frequency—S band—2,700 to 2,900 MHz.

3 Peak Power—5 MW.

4 Pulse Repetition Frequency (prf).

5 Nominal 360 pps synchronized by system trigger pulses from the associated search radar.

6 The frequencies are within those assigned for air defense by the Office of Telecommunications Policy, Federal Communications Commission.

(e) *Health Hazards.*

1 The hazardous area of the HFR is defined as the region between the antenna and the point on the main axis where the power density equals 10 mw/cm^2 which extends along a line 133 feet in front of the antenna.

2 The health effects (hazards), as defined in Handbook 3910.3, states that "of greatest concern to personnel is the thermal effect." There is no record of evidence that birds have been harmed when flying near any of the existing HFR radomes. To protect maintenance personnel, safety interlocks preclude access to this area when the HFR is operating. The x-radiation hazard exists in the transmitter cabinet, therefore, safety interlocks and appropriate shielding are provided to protect maintenance personnel in the area. The hazard area is inaccessible to personnel when the transmitter is radiating since

the interlock circuitry will shut the transmitter down before personnel can have access to the hazard area. Similar precautions are taken to minimize the hazard of x-radiation from certain gas-filled electronic tubes.

(f) *Site Particular Items for Environmental Consideration.*

1 As local conditions warrant, ancillary construction will also be provided to support the HFR, such as access roads or utilities. The HFR is normally located in a rural or isolated area. Still, the need exists for the assessment to include individual considerations listed under paragraphs 327, 328, 329, 330, 332, and 333 of this order. Community continuity impacts and land-use compatibility should not bne overlooked.

2 In addition to NEPA, other Federal laws and directives require that FAA consider environmental and other effects of various actions taken by the agency.

3 The following additional considerations, as appropriate to the individual sites, should be considered.

a Aesthetic or visual impacts of the siting of any of the facilities on nearby residential or rural areas.

b Construction impacts, grading, drainage, clearing sedimentation, runoff, disturbance of water sheds, etc., during construction.

c The impact on local land-use planning, location in relation to parkland and historical sites, dividing, or disruption of community.

d Impact on pattern of behavior of any wildlife species or interference with wildlife breeding.

e Impact on recreational areas.

f Impact on natural resources.

g The source and path of the electrical power supply.

h Areas of cultural or scenic interest.

i Possible contamination of water supply, treatment facility, or distribution system.

j Conducting radar site safety survey.

g. *Environmental Descriptor of an Instrument Landing System (ILS) with an Approach Light System (ALS).* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the environmental impact of the standard ILS with an ALS. It does not include the impact with respect to specific geographical locations of individual systems and is not intended to foreclose consideration of the environmental effect of an ILS or ALS installation.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental proceures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared, or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, light emissions, operational usage, and other known impacts on the environment. The establishment or relocation of an ILS and/or ALS systems are among the projects that require an EIS or ND. (However, it is noted in this order that excepted projects include the conversion of ILS to category II or III standards.) The assessment should cover the environmental review procedures set forth in this order.

(2) *Description.* (a) *Description of System.*

1 The ILS provides electronic guidance information to pilots of properly equipped aircraft assisting them in landing safely during weather conditions of reduced ceilings and lowered visibility. Thus enchancing the operational capability of the airport and the reliability of service to airport users. The ILS consists of a localizer providing lateral guidance along the approach runway centerline extended, a glide slope providing vertical guidance along the approach path, and marker beacons indicating approximate distances of the approaching aircraft from the runway threshold. Figure I shows the standard characteristics and terminology of the ILS. The precision approach capability of the ILS permits the elimination of the existing noisier and tedious circling approach and the economic penalties that diversions from destination airports impose on air transportation services.

2 At certain locations, depending on the variables of terrain considerations and/or airport activity, the ILS components and configuration may vary within certain prescribed parameters. (For example, for a category II ILS, an inner marker is established in conjunction with the other components or a DME employed in lieu of the marker beacons.)

(b) *Description of Components.*

1 Localizer. The localizer component consists of a 40-foot to 105-foot long antenna array and an equipment shelter of various sizes from 8 feet by 12 feet to 16 feet, 20 feet. The antenna array is normally located at the stop end of the runway, from 300 feet to 2000 feet from the end and perpendicular to the runway centerline extended. The equipment shelter is offset from the antenna array, never closer than 250 feet from the array's center. Depending on terrain conditions, the antenna array may be ground-mounted on a concrete slab or elevated on a wooden platform up to 35 feet above ground. the localizer operates on one of 40 channels within the frequency range of 108 to 112 MHz and emits signals which provide the pilot course guidance to the runway centerline. Depending on whether the antenna array employed is unidirectional or bidirectional, the emitted signal's usable distance ranges from 18 to 25 miles in either direction from the antenna array along its centerline extended and 10 degrees on each side. Usable signals are also provided beyond 10 degrees, up to 90 degrees, but only for a distance of from 10 to 17 miles.

2 Glide Slope. The glide slope component consists of a glide slope antenna support tower, from 30 feet to 60 feet in height, with up to three antennas and an 8 foot by 12 foot electronic equipment shelter located 10 feet behind the antenna mast adjacent to the runway touchdown point. This component provides vertical electronic guidance information (the aircraft position above, below, or along the established descent plane extending upward from the runway touchdown point). The antenna system is located in a line parallel to and at a distance of 250 to 600 feet perpendicular to the runway centerline. It operates in the frequency band of 329.3 through 335.0 MHz with 40 assigned discrete frequencies available within this band. The maximum power varies from 10 to 14 watts to a usable distance of 10 miles and ±8 degrees of the centerline of the runway at 95 dbw/m. The glide slope or path projection angle is normally adjusted to 3 degrees above the horizontal so that it intersects the middle marker at about 200 feet and the outer marker at about 1400 feet above the runway elevation.

3 Marker Beacons. This component has a rated power output of 3 watts or less and an antenna array designed to produce an elliptical pattern with dimensions, at 1000 feet above the antenna, of approximately 2400 feet in width and 4200 feet in length. Ordinarily, there are two marker beacons associated with an ILS, the outer marker and middle marker. However, some locations may employ a third marker beacon to indicate the point at which the decision height should occur when used with a category II ILS.

a The outer marker (OM) normally indicates a position at which an aircraft at the appropriate altitude on the localizer course will intercept the ILS glide path. The OM is modulated at 400 Hz and identified with continuous dashes at the rate of two dashes per second.

b The middle marker (MM) indicates a position at which an aircraft if approximately 3000 feet from the landing threshold. This will also be the position at which an aircraft on the glide path will be at an altitude of approximately 200 feet above the elevation of the touchdown zone. The MM is modulated at 1300 Hz and identified with alternate dots and dashes keyed at the rate of 95 dot/dash combinations per minute.

c The inner marker (IM), where installed, will indicate a point at which an aircraft is at a designated decision height (DH) on the glide path between the middle marker and landing threshold. The IM is modulated at 3000 Hz and identified with continuous dots keyed at the rate of six dots per second and a white marker beacon light.

d A back course marker, where installed, normally indicates the ILS back course final approach fix where approach descent is commenced. The back course marker is modulated at 3000 Hz and identified with two dots at a rate of 72 to 95 two-dot combinations per minute and a white marker beacon light.

4 Engine Generator(s). The older tube type ILS may be equipped with emergency engine generator standby power as well as the solid-state ILS that is installed on continuous power runways. They are of the diesel engine type, and the generators are between 6 and 40 kW in size located in a building approximately 10 feet by 20 feet adjacent to one or more of the ILS component structures. Standby power is used only under periodic testing or conditions of commercial power disruption. Engines are muffled, with the noise output level being of a considerably lower value than the surrounding airport activity.

5 Approach Lighting System (ALS).

a The term "visual guidance light system" is used for identifying those light configurations located on and in the vicinity of an airport for the purpose of providing pilots with a visual reference for guidance purposes, improving the operational safety of the aircraft during approach for landing.

b An ALS is a configuration of signal lights disposed symmetrically about the extended runway centerline starting at the landing threshold and extending outward into the approach zone of the airport. See Figure 2 for pictorial view of the light configuration for ALS with flashers, and Figures 3 through 7 for other ALS configurations. These systems provide visual information on runway alignment, height perception, roll guidance, and horizontal references.

c The approach light system with sequenced flashing lights (ALSF–2) used in conjunction with the category II ILS ALSF–2, described below, is the most extensive system. It is normally 3000 feet in length. This configuration contains the maximum number of lights and candlepower of all the visual guidance lighting systems. It is normally operated at a much reduced power level with the maximum intensity being used only during the most adverse weather conditions. The maximum intensity step is automotically converted to a lower level after 15 seconds of operation.

d The ALSF–2 consists of 30 centerline bars of 5 white lights in each bar and 100-foot spacing of the bars, 9 side row bars of 3 red lights each, one row each side of the centerline light. These side bars are abeam the first nine centerline bars lights. Between the side bar lights and the fifth centerline bar lights is a bar of four white lights. Abeam each side of the tenth centerline bar is a bar of 8 white lights. Starting at the tenth centerline bar, a sequence flasher light is incorporated in each centerline bar for the next 20 bars.

e A row of green lights on 5-foot centers is located near the threshold and extends across the runway threshold and outwards a distance of approximately 45 feet from the runway edge on either side of the runway. The sequenced flashing lights emit a bluish-white light and flash in sequence toward the threshold at a rate of twice per second. The light is distributed as a cone of light emitting from the light unit as follows:

(i) 30 degree cone—2000 effective candelas.

(ii) 20 degree cone—5000 effective candelas.

(iii) 10 degree cone—9000 effective candelas.

f The flash duration is between 100 and 300 microseconds at the 50 percent candela power intensity level. The peak effective candelas do not exceed 17,000.

(3) *ILS and ALS Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Direct Impacts.

a In each building housing electronic equipment, an air-conditioner or a ventilating system may be installed. Either system must meet the criteria in Specification FAA–C–2256a. The noise of the associated electronic system in the building is measured in decibles at a point of highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/lb, Electronic Equipment General Requirements, Part I, Basic Requirements for all Equipments. This criteria is described in table 4.

Table 4.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	10000
Sound Pressure Level dB Re. 0.0002 Microbar							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67

b This criteria is within the acceptable level of the damage risk contours for an eight-hour workday, as defined in subpart G, section 1910.95, of the occupational safety and health standards.

c The solid-state localizer, glide slope, and marker beacons all generally have battery back-up for emergency power, but at designated continuous power airports, may also have an engine generator for standby power. These range from 20, 15, and 5 kW, respectively. The greatest noise produced by the standby engine generator is within the engine generator room. Maintenance personnel attending these units are in the engine generator room for short periods of time, and the noises should have no damaging effect to their hearing as occupational health standards established by the Occupational Safety and Health Administration are adhered to. See CAND for engine generators.

2 Indirect Impacts. The installation of an ILS will have an effect on air traffic activity. It will result in designating the runway as an instrument runway with the result that the utilization of the runway may increase during inclement weather. The net effect in the airport vicinity could be an increase in air traffic and noise over one area, and a decrease in another area. Changes in noise levels might necessitate the preparation of a noise analysis utilizing the guidelines and procedures set forth in paragraph 324 of this order. The analysis should include information for three conditions: the present condition, and the condition forecast with and without the proposed change (at the proposed project completion date). Proper methodologies as outlined in the paragraph should be used when appropriate.

(b) *Fuel Emissions.*

1 Direct Impacts. The fossil fuel emissions produced by the engine

generator(s) are minimal or similar to that of an automobile engine and can be anticipated to occur only during emergency operations or periods of routine maintenance. All fuel tanks have been modified in accordance with HEW standards to prevent vapor emissions during refueling. Normal fuel storage capacity is less than 500 gallons. The location of the tanks are either above ground or underground, depending on individual location considerations. The safety aspect of having the engine generators for standby power more than offset any adverse effects. The engine generators meet the requirements of Specification FAA–E–2204A, Engine Generator Sets, 5 KW to 300 KW, which limits the smoke reading to 4.5 as analyzed on a Bosch analyzing instrument.

2 Indirect Impacts. The redistribution of air traffic may cause changes in levels of air pollution that require the assessor to prepare the type of analysis outlined in paragraph 325 of this order.

(c) *Light Emission and Visual Impacts.* The sequenced flashers of the ALS could have a damaging effect to the retina of the eye particularly if viewed with any optical magnifying agent. Any damage which could occur will depend upon many variables, including distance, power of the magnification, and the physical condition of the eye involved. It is therefore recommended that under no circumstances should the sequenced flashers be viewed through magnifying agents. Annoying effects could be created by the flashers if an occupied building is in proximity of the flashers. The strobing effect may be hazardous to drivers of vehicles on surrounding highways and to occupants of buildings nearby. The effect of these lights may be determined as the light intensities diminish inversely with the square of the distance for any light source. Mitigating measures such as shielding or angular adjustments should be undertaken when appropriate. In any case, the assessment should include the impact of ALS in this context by following the procedures set forth in paragraphs 338 and 339 of this order.

(d) *Electronic Emissions.* The electronic signals from the marker beacon could effect electronic devices which are not provided with adequate electronic filters to eliminate the assigned 75 MHz frequency.

(e) *Construction Impacts.*

1 The impacts associated with the ILS system during the construction period are limited and short term in nature. Construction includes the use of power-operated excavation equipment and vehicles which will provide minor fossil fuel emissions.

2 Construction activity is normally limited to removal of topsoil to adjacent land surfaces, surfacing of the plot area with gravel sterilized to prevent weed growth, excavation for the construction of piers for support of the building and light structures, and grading and gravel surfacing of the access roadways. Normal construction safeguards to minimize erosion are utilized. Assessors should follow the guidelines established in paragraph 326 of this order for consideration of water quality requirements, available water resources, and impact on existing water tables.

(f) *Site Particular Items for Environmental Consideration.* It is important to note that the establishment of certain ILS system components may require the procurement of additional property. Under such instances, assessments must be made with reference to paragraphs 327, 328, 329, 330, 332, and 333 of this order. Impacts on community continuity and land-use compatibility should not be overlooked. In addition to NEPA, other Federal laws and directives require that the FAA consider environmental and other effects of various actions taken by the agency. In addition, the following considerations, as appropriate to the individual site should be considered:

1 Any roadway or embankment construction.

2 The individual site impact of air traffic over the approach area of the ILS. (Consideration of residential areas, schools, public buildings, etc.)

3 The potential effect of approach lights on residents, highways, or public facilities in the area of the light system.

4 The impact of structure (ILS building or approach light structures) on waterways, roadways, natural drainage routes or present use of the environment.

5 The potential incompatible appearance of structures in relationship to its surroundings.

6 The effect of any wildlife and waterfowl in the area.

7 Potential frequency interference of marker facilities on surrounding television or radio reception.

8 Aircraft operational impact on the surrounding area resulting from increased activity if adverse weather conditions exist and its relative rearrangement of aircraft traffic flow because of the ILS installation.

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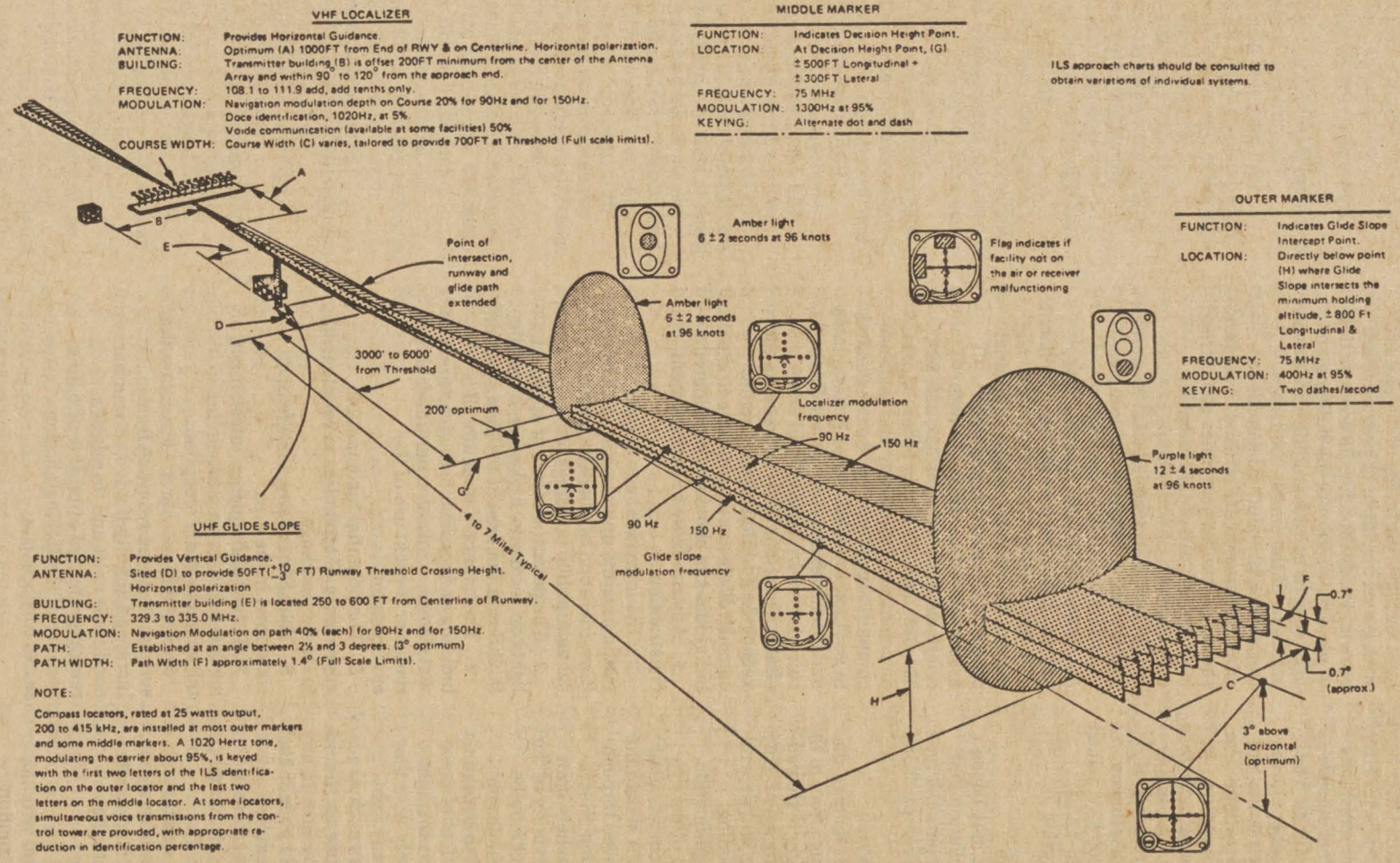
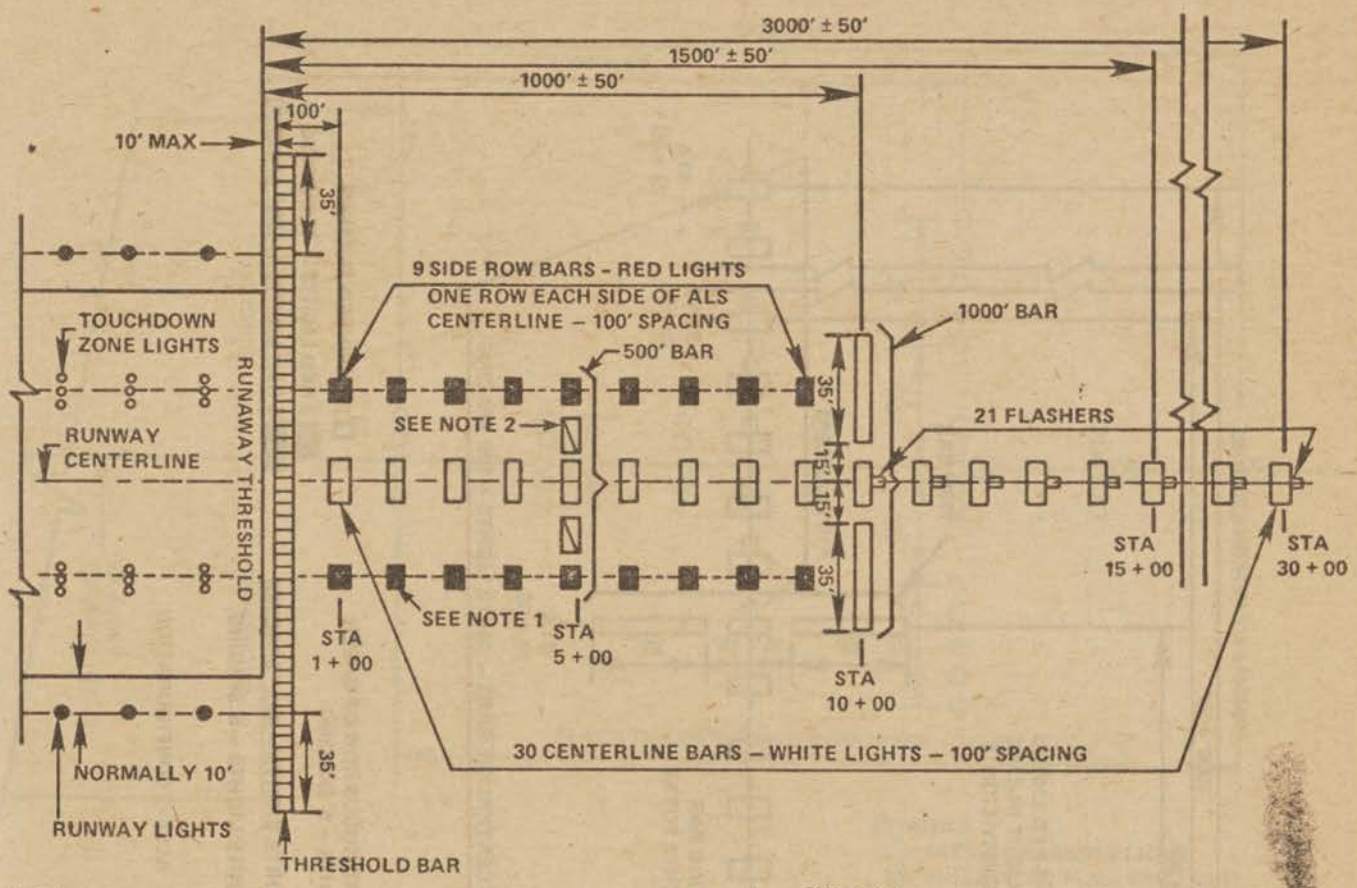


FIGURE 1. ILS FAA INSTRUMENT LANDING SYSTEM STANDARD CHARACTERISTICS AND TERMINOLOGY

APPENDIX 2



*NOTES

1. LOCATED SIDE ROW BARS IN LINE WITH TDZ LIGHTS
2. LOCATE 4-LIGHT BARRETTES EQUI-DISTANT BETWEEN SIDE ROW BARS AND CENTERLINE BARS

SYMBOLS

- CONTINUOUS ROW OF GREEN LIGHTS – 5' SPACING
- 5 WHITE LIGHTS – 40½" SPACING
- 8 WHITE LIGHTS – 5' SPACING
- SEQUENCED FLASHER
- 4 WHITE LIGHTS – 5' SPACING
- 3 RED LIGHTS – 5 ' SPACING

FIGURE 2. ALSF-2 CONFIGURATION

APPENDIX 2

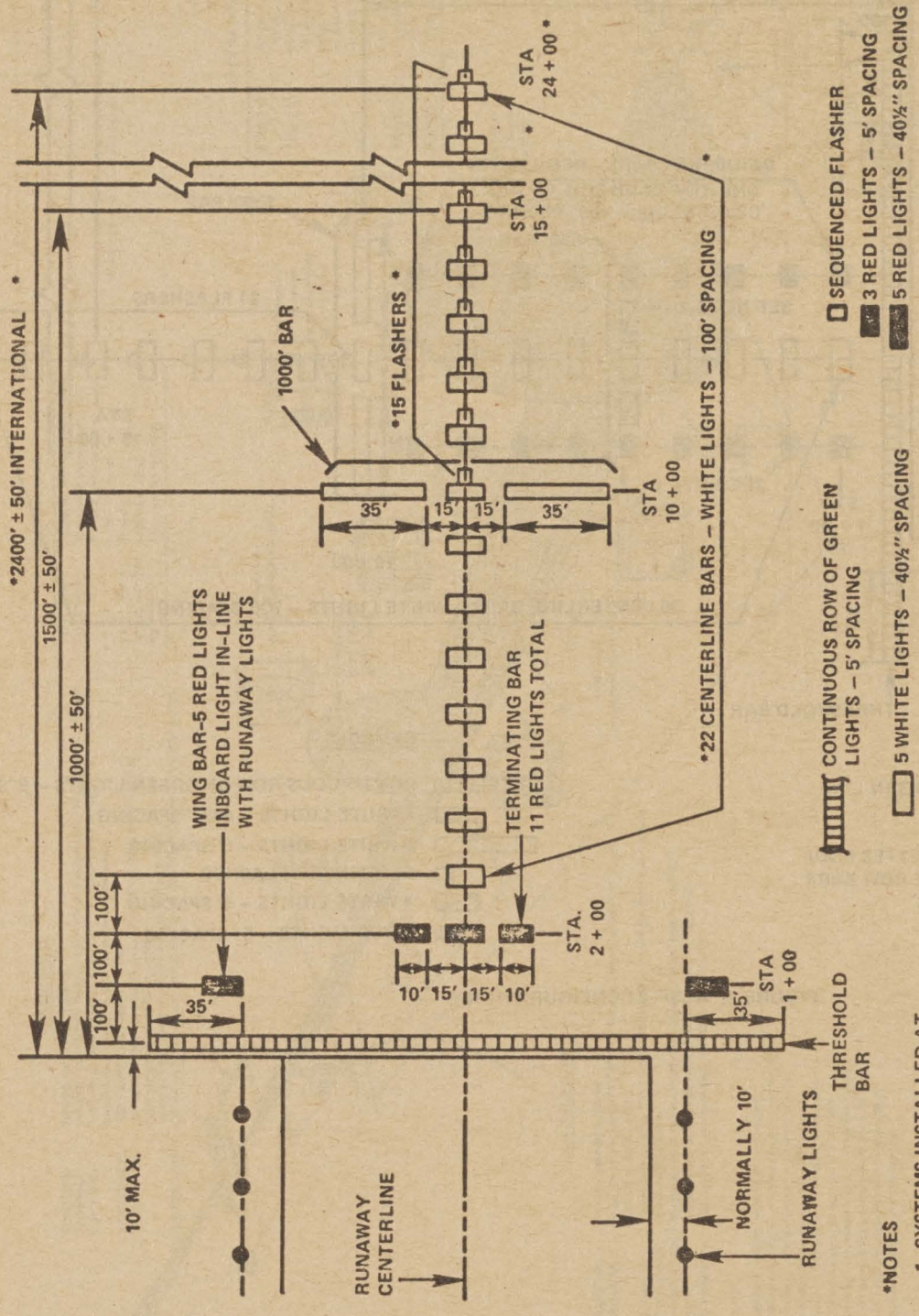


FIGURE 3. ALSF-1 CONFIGURATION

*NOTES

1. SYSTEMS INSTALLED AT INTERNATIONAL AIRPORTS WILL BE 3000 FEET IN LENGTH, *

APPENDIX 2

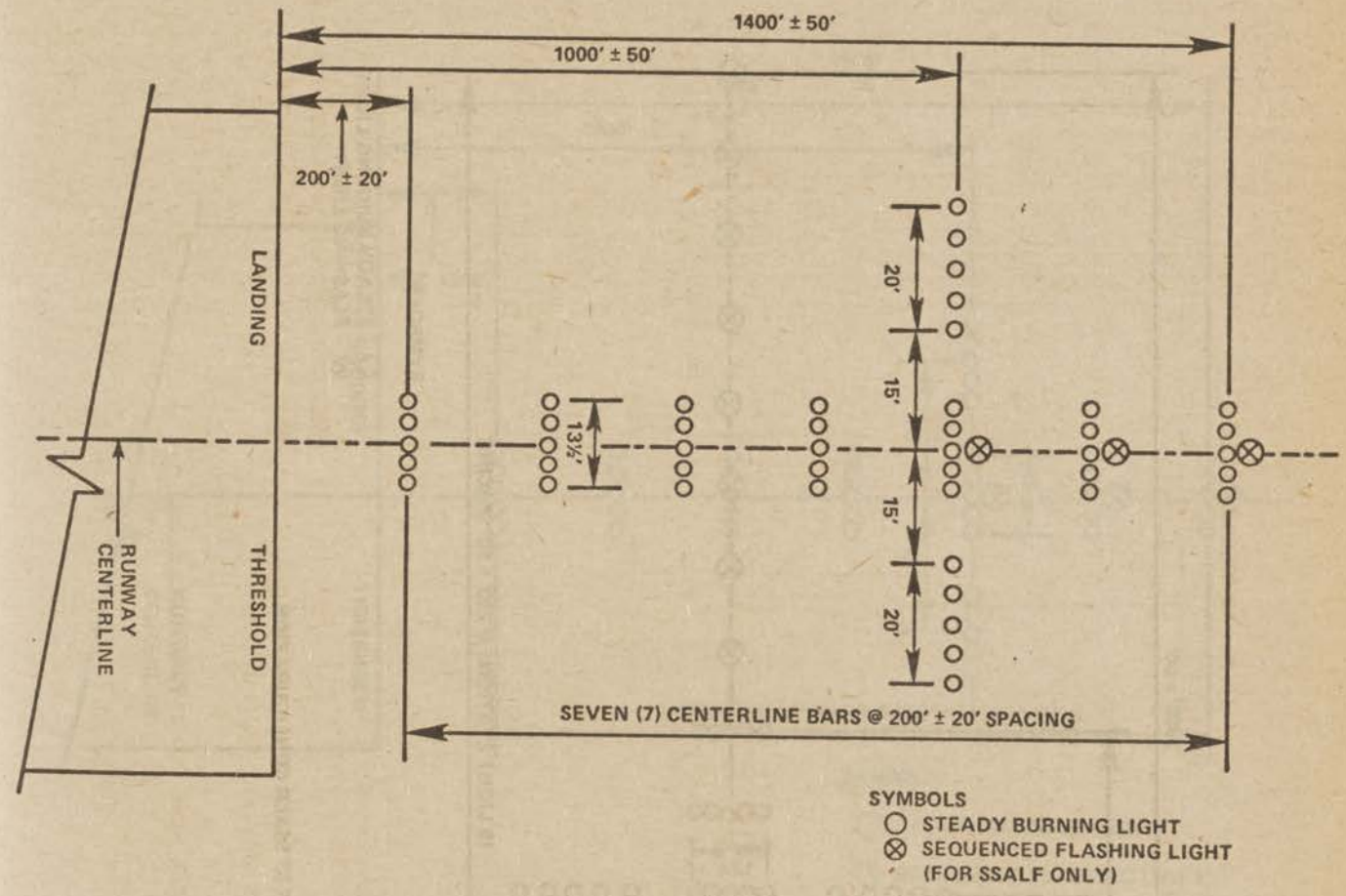


FIGURE 4. SSALS AND SSALF CONFIGURATIONS

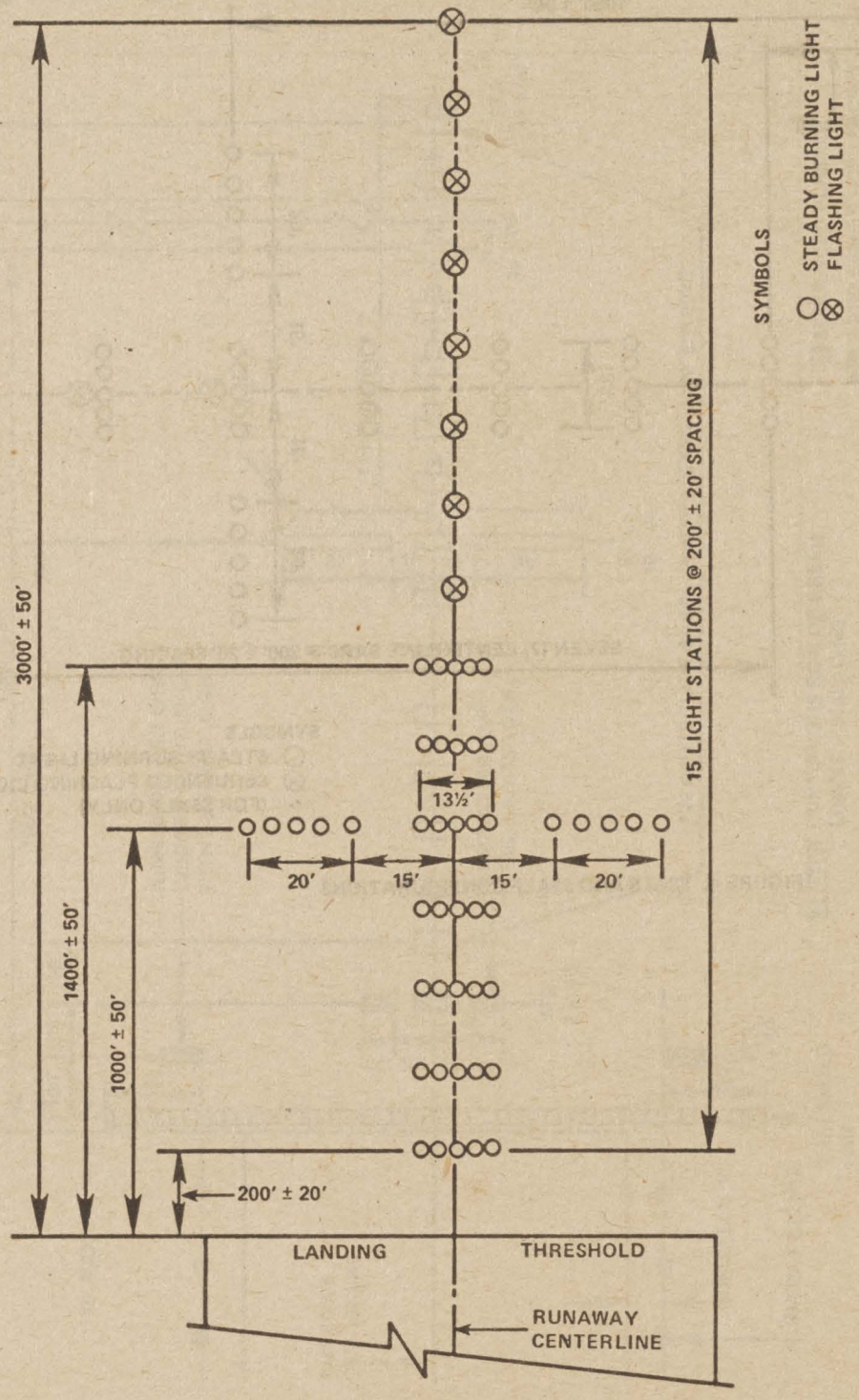


FIGURE 5. SSALR CONFIGURATION

APPENDIX 2

APPENDIX 2

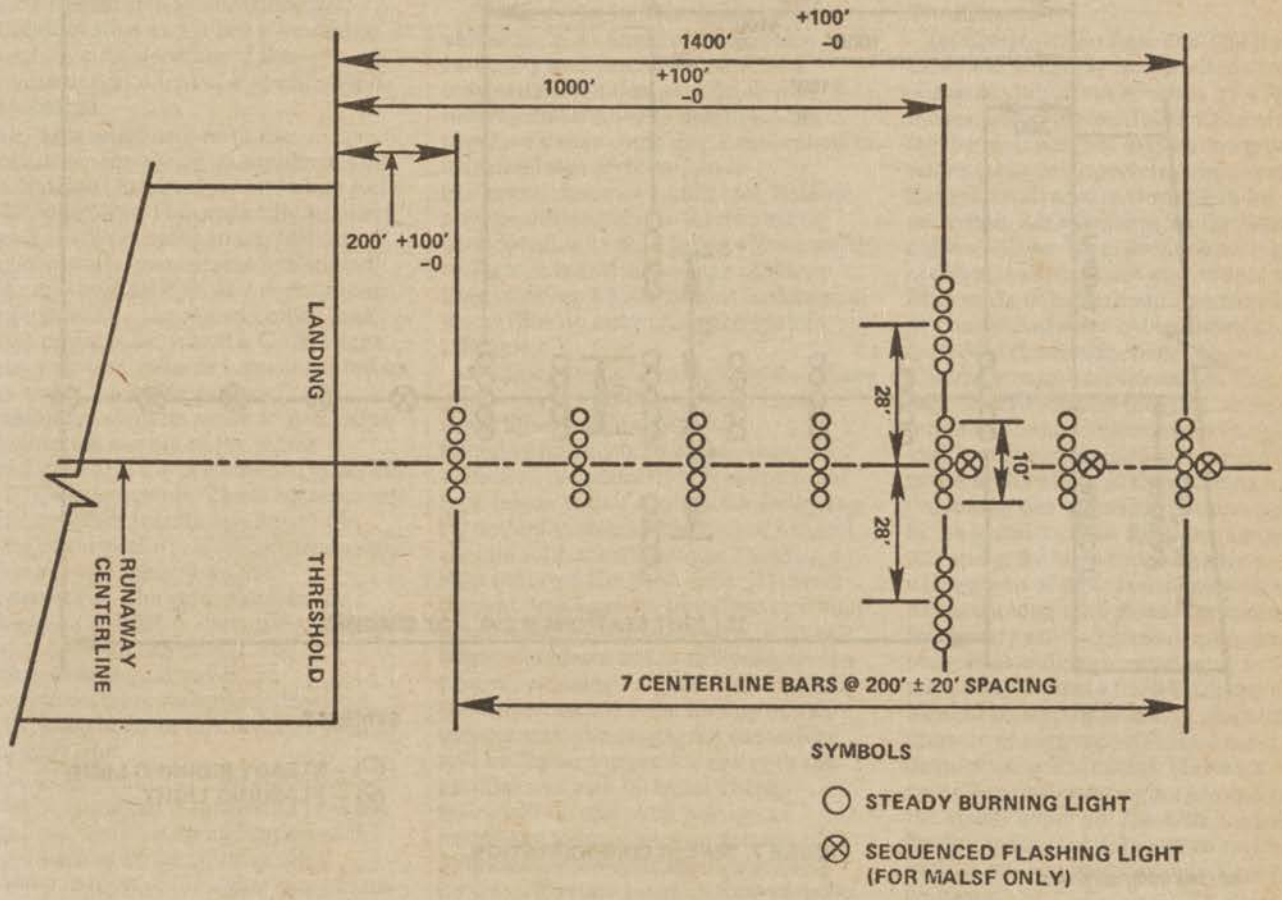


FIGURE 6. MALS AND MALSF CONFIGURATIONS

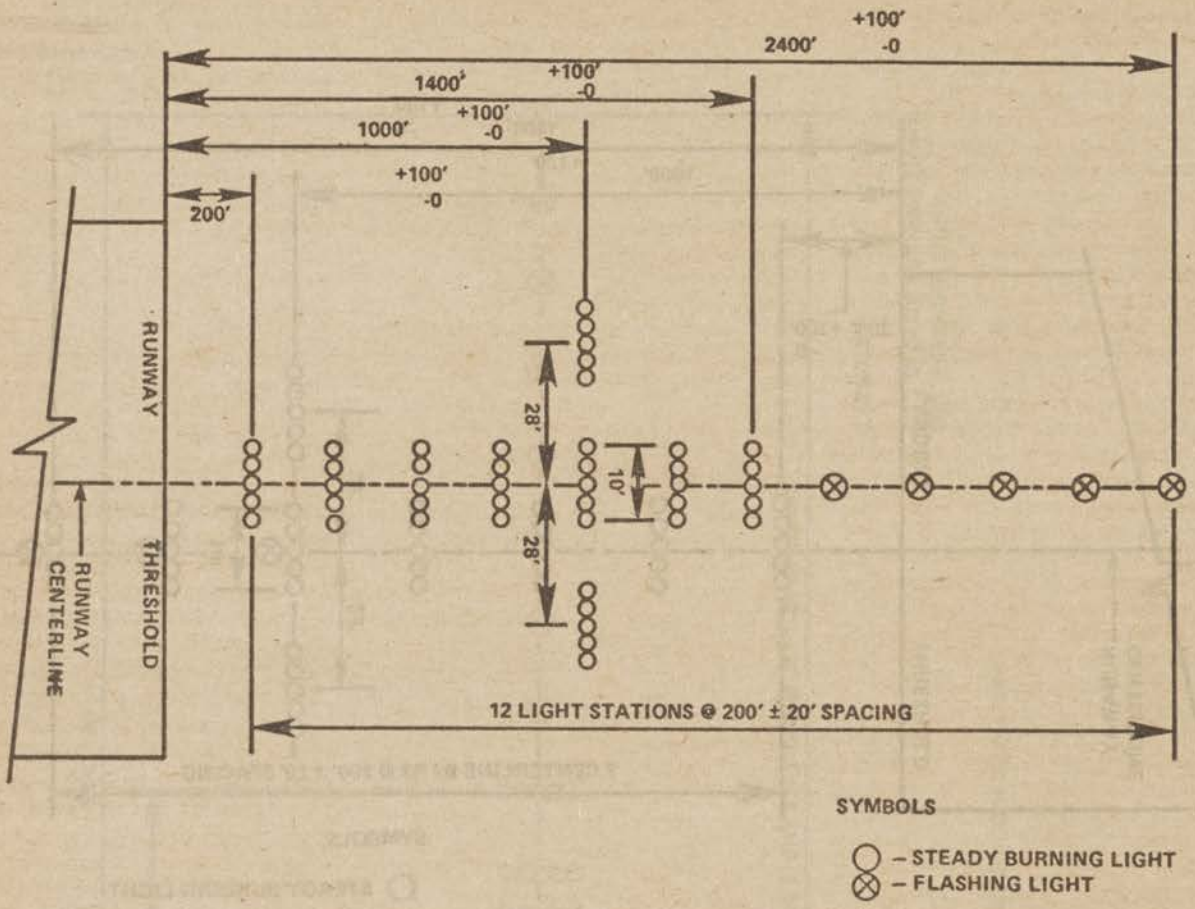


FIGURE 7. MALSR CONFIGURATION

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h. *Environmental Descriptor of Runway End Identifier Lights (REIL).* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the environmental impacts of REIL. It does not include the impact with respect to specific geographical locations or individual sites and is not intended to foreclose consideration of the environmental effect of a specific REIL installation.

(b) This order sets forth the procedures for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, light emissions, and other known impacts on the environment. The establishment or relocation of REIL is among the projects that require an EIS or ND. The assessment should cover the environmental review procedures set forth in the body of this order as well as this appendix.

(2) *Description.* (a) *Description of System.* The REIL is located to provide rapid and positive identification of the approach end of the runway. The flashing feature of the lights provide an attracting characteristic making the REIL effective for identification of a runway surrounded by a preponderance of other lighting or a runway lacking contrast with surrounding terrain. These ligths, consisting of two synchronized flashing white lights, are normally installed at the end of a noninstrument runway, but because of their characteristics, can be used under marginal weather conditions.

1 Site Location. The optimum location of the REIL is laterally on each side of the runway threshold facing the approaching aircraft, 40 feet from the runway edge and in line with the existing runway threshold lights. The light units may be located laterally up to 75 feet from the runway edge and longitudinally 200 feet either upwind or downwind from the line of threshold lights. The location tolerances may be employed as required to keep the light units a maximum distance of 40 feet from other runways or taxiways. Light units may be located as nearly equidistant from the runway centerline as practical with the difference in the distance of the two lights to the centerline not exceeding 100 feet. Both units can be within 10 feet of a line perpendicular to the runway centerline.

2 Light Aiming. The lights may be aimed up to an angle of 10 degrees vertically and towed out (directed outward from a line parallel to the runway centerline) 15 degrees. This provides a maximum angle equivalent to a vertical rise of 17-½ feet in a horizontal distance of 100 feet. Baffles may be utilized where warranted by user compliants of building effects and/or flight inspection findings of where they interfere with adjacent buildings, if the baffles do not reduce the system efficiency.

3 Light Types/Characteristics. There are two types of units which may be used: Specification 1106, box Specification 1250, frangible type. All units will be mounted in weatherproof type boxes which contain the following: (1) optical system consisting of a metal rflector with a minimum of 7 inches, a light lens and the flash tube; (2) direct durrent rectifiers; (4) transformer which is provided with voltage taps in 20-volt increments from 200 to 260 volts on the primary winding for adjusting input to the flasher at 240 volts for any supply voltage with the range; the secondary will be center tapped for use with the rectifier and will be rated at 250–milliamps dc and such voltage as necessary to provide a dc voltage of 2000-volts at 24-volts input; and (4) a flasher capacitor rated at 2500-volts dc with a normal working voltage of 2000-volts dc. Light intensities at the source are 15,000 candelas at the center with an average of 5000 candelas through-percent out 12-½ degree light cone. Intensities may vary ±20 percent. Access to these components is by means of a door in the cabinet which is provided with an interlock switch which disconnects all incoming power and control circuits except the convenience outlet.This interlock switch discharges all flasher capacitors through a relay within 30 seconds. In addition, a means is provided to discharge the flasher within one minute in the event of the interlock switch failure.

(b) *Noise Impacts.* None.

(c) *Fuel Emissions.* None.

(d) *Light Emissions.*

1 Intensities are in three steps ranging from 100 percent to 1 percent. At an input of 240 volts ±2 volts, they are:

a High. Step 3—15 500 ±20% effective candelas.

b Medium. Step 2—21% to 31% of step 3. 6% to 10% of step 3.

c Low. Step 1—1% to 2% of step 3.

2 Discharge rate is on the average of two flashers every second and is designed such that both units flash simultaneously. Light intensities diminish inversely with the square of the distance.

(e) *Construction Impacts.* The light units will normally be installed on a concrete slab 2 feet 4 inches by 4 feet 8 inches, set at ground level. Excavation for the slab will not disturb the ground water table or airport drainage systems. Excess excavated material will be relocated. All trenching for the light cables will be in accordance with good construction practices and should cause little or no siltation runoff as trenches are backfilled after cable installation.

(f) *Site Particular Items for Environmental consideration.* The impact constructing the REIL should be minimal on the environment. For each site, an impact assessment should be made of the effect of the strobing and the intensities which can be anticipated in the vicinity of the REIL. Paragraphs 338 and 339 of this order require an assessment of light emissions and visual impacts along with measures taken to lessen any environmental annoyance, such as shielding or angular adjustments. Since the REIL is normally located on airport property, the various impacts associated with the land acquisition are minimal. However, careful consideration should be given to the visual impact of the REIL when the facility is located adjacent to residences and/or moving vehicles on a street or highway.

i. *Environmental Descriptor of an Air Traffic Control Tower (ATCT).* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the environmental impact of the standard ATCT. It does not include the impact with respect to specific geographical locations of individual systems and is not intended to foreclose consideration of the environmental effect of an ATCT upon a specific ATCT installation.

(b) This order sets forth the procedures and policies for agency compliance. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects with the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, increases or

decreases in operational usage, noise impacts, the impact of light emissions and other known impacts on the environment. The establishment or relocation of an ATCT is among the projects that require an EIS or ND.

(c) The ATCT, which is normally located on the airport property, serves as the central hub of activity for controlling aircraft movements on the airport surface and the flight arrivals and departures of these aircraft. It serves as a means of safely expediting the movement of these aircraft by visual and voice communications in an orderly manner. The control tower is located at a site which permits unobstructed visibility of all the traffic patterns, approaches, runways, taxiways, operational portion of the apron(s), and other operational areas necessary for the control of ground and air traffic. Its size is dependent upon the classification, that is, level I, level II, level III or level IV (see Table 6 for criteria); and, the tower height is dependent on visibility requirements of the area to be controlled. The assessment should cover the environmental review procedures set forth in the body of this order as well as this appendix.

(d) Various types of conventional construction may be used such as modular units, structural steel and reinforced concrete, curtain wall, prefabricated panels, and concrete block.

(2) *Description of the Facility.* The control tower cab is the glass enclosed portion on top of the tower structure. The cab size may vary from 225 to 525 square feet of floor area. From this vantage point, operations are viewed and controlled by the air traffic controllers. The equipment used by the controller to control air traffic (radio and telephone communications, windspeed and directional indicators, clocks, altimeter setting indicators, light guns, radar displays, airport lighting, panels, and consoles) are located around the periphery of the cab. The control tower may also contain a small kitchen unit for the convenience of the controllers. Heating, cooling, and ventilation in the control tower is provided for the comfort of the personnel and for proper operation of the electronic equipment. Depending upon the classification of the control tower, the following may also be housed in the structure: electrical panels, elevator and controls, radar and communications equipment, telephone equipment, sink, battery and battery charger, toilet, workbench and testing equipment, terminal radar approach control (TRACON) room, general offices, training rooms, equipment and storage rooms, and maintenance rooms. Where required, engine generators provide standby power for the control towers. The engine generators may be housed in the building at the base of the tower structure or in a transportable van near the tower.

(3) *System Environmental Impacts (Internal).* (a) *Noise.*

1 Direct.

a In the control tower an air-conditioner and/or a ventilation system may be installed, depending upon the activity level and type of tower. These systems must meet the criteria in Specification FAA–D–2256a. The noise of the associated electronic system in the building is measured in decibles from a point of the highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/lb, Electronic Equipment, General Requirements, Part 1, Basic Requirements for All Equipments.

Table 5.—*Noise Levels*

Frequency:								
20	25	150	300	600	1200	2400	4800	
Band Hz:								
75	150	300	600	1200	2400	4800	10000	
Sound Pressure Level dB Re. 0.0002 Microbar								
Air Conditioning:								
69	62	56	50	47	45	43	43	
Electronic Equipment:								
100	89	82	76	73	70	68	67	

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criterial is within the acceptable level of the damage risk contours for an eight-hour workday as defined in subpart G, section 1910.95, of the occupational safety and health standards.

c An engine generator of 50 to 300 kW is provided for standby power. The greatest noise produced by the standby engine generator is within the engine generator room. Because this installation meets occupational health standards which have been established and the fact that maintenance personnel attending these units are in the engine generator room for short periods of time, no damaging effect to their hearing is anticipated. The engine generator is only in operation during power failure and during routine maintenance, therefore, the adverse effect of noise and fossil fuel emissions would be limited.

2 Indirect. The establishment of an ATCT may result in changes in air traffic patterns, resulting in changes in noise levels over certain areas. With increased safety and efficiency in the airways, the possibility of mid-air collisions are minimized. The aircraft will be required to maintain a higher elevation over the terrain and concentrate the operational noise impact over centralized areas rather than a wider one. Controversial changes in noise levels may necessitate a noise analysis as outlined in paragraph 324 of this order. Such analysis shall include information for three conditions: the present condition, and the conditions forecast with or without the proposed change (at the proposed project completion date).

(b) *Fuel Emissions.* In order to have an adequate energy source for detecting and controlling air traffic, engine generators at levels II, III, and IV facilities provide the standby power for the system in the event of a commercial power failure. The fossil fuel emissions produced by the diesel engine generator are minimal or similar to that of an automobile engine and can be anticipated to occur only during emergency operations or period of routine miantenance.

(c) *Light Emissions.*

1 Obstruction lights. Located on top of the tower structure. The intensity of the obstruction light should not be less than 10 candelas of aviation red light. The wattage of the light bulbs is 125 watts.

2 Lights within the tower cab.

3 Light Guns (located within the tower cab).

Note.—The light gun contains a 50 candlepower, 12-volt bulb with red and green filters. The light gun is used by the controllers to signal when radio voice communications fail. The light gun is a spotlight type with the spotlight measured at 100 feet at 150,000 candels.

(d) *Electronic Emissions.*

1 Transmitters.

2 Frequencies.

a VHF. 118–136 MHz.

b UHF. 225–400 MHZ.

c HF. Alaska only.

3 Power 10 to 50 watts.

4 The frequencies are within those assigned to the FAA by the Office of Telecommunications Policy, Federal Communications Commission.

(e) *Construction Impacts.* The impacts associated with the construction of the ATCT are limited and short term in nature. Construction includes the use of power-operated excavation and erection equipment and vehicles which will produce minor fossil fuel emissions. Construction activity is normally limited to removal of topsoil to adjacent land areas, grading and surfacing of the

parking area and access road, construction of foundation and the structure. Normal construction safeguards to minimize erosion are utilized. Assessors should follow the guidelines established in paragraph 326 of this order for construction of impact on water quality, water resources, and on existing water tables.

(f) *Site Particular Items for Environmental Consideration.* As indicated above, the impact of the construction or operational use of the ATCT will have minimal impact on the environment. In addition to NEPA, other Federal laws and directives require that FAA consider environmental and other effects of various actions taken by the agency. The following factors should be considered during the site selection phase, and analyzed under the procedureal guidelines of this order.

1 Any unusual site preparation aspect, landfills, access road, parking lot development, building utility relocations.

2 Potential additional power consumption requirements, principally in the construction of a level III, IV, or V tower.

3 Potential requirements to establish remote transmitter/receiver facilities; their possible locations, and impacts related to their siting.

4 Impact created by the estimated increase in air traffic operations.

5 Any aesthetic or visual impact of the site installation on nearby residences or rural areas.

Table 6.—*Tower Classification*

FAA facility level	*FAA numerical volume ranges*
I	A facility not meeting level II criteria.
IIa	A radar approach control facility with less than 100,000 annual instrument operations.[1]
IIb	A nonradar approach control facility having a minimum of 80,000 or more total annual airport operations [2] with 20,000 instrument operations annually; or a minimum of 100,000 or more total airport operations annually with 15,000 or more instrument operations annually; or any equivalent proportionate combination within the range of these minima.
IIc	A facility having between 170,000 and 500,000 total annual airport operations.
IIIa	A radar approach control facility having between 100,000 and 300,000 annual instrument operations.
IIIb	A radar approach control facility having 100,000 or more annual instrument operations, but exercising approach control authority only in the immediate vicinity of an airport as delegated by the "parent" approach control facility.

[1] An instrument operation is the movement of an aircraft under instrument flight rules and may be a departing, arriving, or over flight under the jurisdiction of a specific facility. An aircraft executing a missed approach is counted as a departing aircraft.

[2] An airport operation is either a landing or takeoff at the airport at which the facility is located. A low approach below traffic pattern altitude of a touch-and-go operation shall be counted as both a landing and a takeoff, i.e., two operations.

j. *Environmental Descriptor of a Very-High Frequency (VHF) Omnidirectional Range/Tactical Air Navigation (VORTAC) Facility.* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the normal environmental impact of the standard VORTAC facility system. It does not include the impact with respect to specific geographical locations or individual sites and is not intended to foreclose consideration of the environmental effect of a specific VORTAC installation.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, and other known impacts on the environment. The establishment or relocation of facilities used for en route navigation such as the VORTAC are among the projects that require an EIS or ND. The environmental impact of these facilities normally result from providing access to the remote facility and constructing the facility itself. (However, it is noted in this order that an excepted project from this assessment process would be the conversion of very-high frequency range facility (VOR) to VORTAC.) The assessment should cover the environmental review procedures set forth in the body of this order as well as this appendix.

(2) *Description.* (a) *Description of System.* There is a combination of approximately 900 VOR or VORTAC-type facilities in the NAS. In an aircraft equipped with omnirange instruments, the pilot can select the desired direction to or from a VOR/VORTAC facility within his reception area. The information received will indicate his position in relation to his selected course and also his distance to or from the facility when it is a VORTAC. See Figure 1 for schematic description of the VOR/VORTAC system.

(b) *Description of Facilities.*

1 Terminal VOR (TVOR) or TVOR with Distance Measuring Equipment (TVOR/DME).

a Under present FAA policy, the TVOR consists of a single set of VOR electronic equipment which may be installed in either a 10 foot by 24 foot trailer or a modular building for the TVOR. Space is included for future conversion of the TVOR to a TVOR/DME. The agency power policy stipulates that configuration C (primary power only) is the basic power requirement for TVOR.

b The roof of the trailer along with attached sections make up the counterpoise, which is approximately 27 feet in diameter.

2 En Route VOR or VOR and DME. This facility is similar to the TVOR in building size and equipment configuration. A VOR is normally used in the NAS on airways which do not support jet routes or serve as controlling points for continuous power airports as defined in the agency power policy.

3 VORTAC. The VORTAC normally has a single set of VOR and TACAN electronic equipment. Present designs specify a masonry or modular building to house the above equipment (single or dual) and an engine generator, if required. Engine generators shall be installed at VOR/VORTAC facilities that either support the jet route structure or serve an operational requirement for the continuous power airports; all others shall be provided with configuration C (primary power only). The VOR antennas are housed inside a 16-foot-high cone with the TACAN antenna affixed at the top. This coaxial configuration is the same for standard and mountaintop facilities. The antenna for the standard facility is mounted on the roof of the building, whereas for the mountaintop facility, it is ground mounted. Extended roof sections provide a circular counterpoise normally 52 feet in diameter, when the antenna is located on the building.

4 Doppler VOR/VORTAC. The doppler VOR/VORTAC is distinguished from the conventional facility in that the roof counterpoise is extended by open-web steel joints and wire-mesh cover to form a concentric counterpoise 150 feet in diameter. 50 antennas, symmetrically disposed on a 22-foot radius circle with the antenna cone in the center, are utilized for the doppler VOR. At standard facilities, the TACAN antenna offset will not exceed 100 feet. However, at a doppler VOR, the antennas will be separated by not more than 260 feet from the center of the counterpoise. The height of the TACAN antenna above ground is approximately 30 feet (20 feet

above the VOR counterpoise) unless the terrain and the type of antenna to be used require a variance for proper TACAN operation. At mountaintop facilities, the TACAN antenna may be installed as close as 100 feet to the VOR antenna array, with its top not more than 10 feet above counterpoise level. To minimize operational displacement of aircraft during instrument approaches, the offset is aligned as nearly as possible with the instrument (final) approach radial, considering siting and cost factors.

(3) *System Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Environmental Systems. In each of these buildings an air-conditioner or ventilating system may be installed. Either system may be installed in accordance with the criteria established in Specification FAA–C–2256a.

2 Electronic Equipment.

a The noise of the associated electronic system in the building is measured in decibels from a point of the highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/lb, Electronic Equipment, General Requirements, Part 1, Basic Requirements for All Equipments.

Table 7.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	10000
Sound Pressure Level dB Re. 0.0002 Microbar.							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67
Cumulative measured at a typical VORTAC:							
72	84	80	75	73	69	65	61

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour workday as defined in subpart G, section 1910.95, of the occupational safety and health standards.

3 Standby Power. If a diesel engine generator of 15 to 50 kW is provided, the greatest noise produced by the standard engine generator is within the engine generator room. Since occupational health standards have been established and the fact that maintenance personnel attending these units are in the engine generator room for limited periods of time, no damaging effect to their hearing has been experienced to date. The impact of the engine generator is that described in the CAND for engine generators.

(b) *Fossil Fuel Emissions.* The fossil fuel emissions produced by the engine generator are minimal or similar to that of a small automobile engine and can be anticipated to occur only during emergency operations or periods of routine maintenance. The engine generators for the system must meet the operational requirements of Specification FAA–E–2204a, which limits the smoke reading to 4.5 as analyzed by a Bosch analyzing instrument. All fuel tank fill pipes have been modified in accordance with HEW standards to prevent vapor emissions during refueling. These tanks, with a fuel capacity of less than 500 gallons, are normally installed below ground. The safety aspects of having the engine generators for standby power more than offset any adverse effects.

(c) *Light Emissions.* None, except for obstruction lighting, if installed.

(d) *Electronic Emissions.*

1 VOR.

a 108.0—117.95 MHz.

b VOR 165 watts.

c DVOR 83 watts.

2 TACAN.

a 962—1213 MHz.

b 3.5—5.0 kW peak power.

3 DME.

a 962—1213 MHz.

b 50 watts to 1.0 kW peak power.

4 The frequencies are within those assigned to the FAA by the Office of Telecommunications Policy, Federal Communications Commission.

(e) *Construction Impacts.* The impacts associated with the construction of a VOR are of a limited duration. These impacts can be atributed to preparation of the site. Because of the need to provide adequate signal coverage, these facilities are normally located on predominant landmarks which have been cleared of all obstacles, such as trees, for a predetermined distance. There may be short-term impacts which result from providing access to and parking at the site, clearing, grubbing, soil sterilization, and building foundation construction. Noise and fossil fuel emissions from the operation of trucks and construction equipment can be anticipated during this period. During this period, normal safeguards to minimize erosion are utilized. Assessors should follow guidelines established in paragraph 326 of this order for consideration of water quality requirements, available water resources, and impact on existing water tables.

(f) *Site Particular Items for Environmental Consideration.*

1 As local conditions warrant, ancillary construction will also be provided to support the VORTAC, such as access roads or utilities. In practically all instances, the VORTAC is located off airport property. Thus, the assessment is to consider the impacts of this construction and land acquisition as well, in compliance with this order. Under such instances, assessments must be made with reference to paragraphs 327, 328, 329, 330, 332, and 333 of this order.

2 Community continuity impacts and land-use compatibility should be assessed. In addition to NEPA, other Federal laws and directives require that FAA consider environmental and other effects of various actions taken by the agency.

3 Since the impact of the VOR/VORTAC varies with the type and location of the facility being constructed, the following considerations as appropriate for each facility should be considered.

a Aesthetic or visual impacts of the siting of any of the facilities on nearby

APPENDIX 2

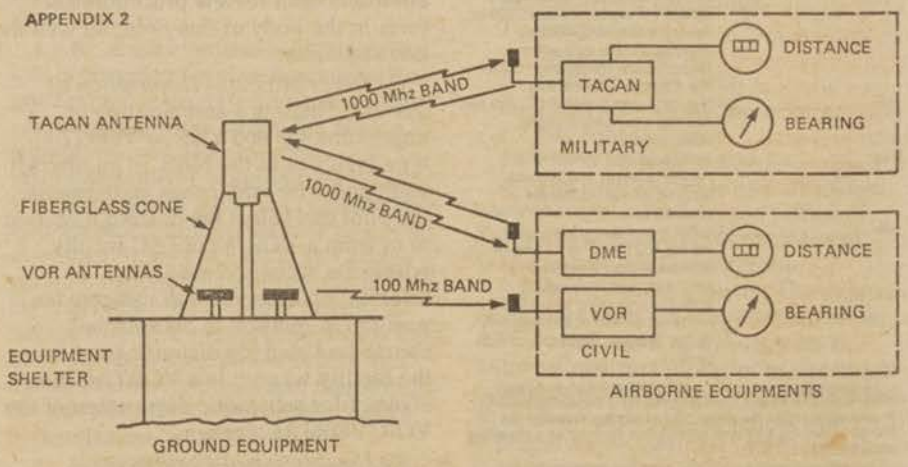

FIGURE 1. VOR/VORTAC SYSTEM

residential or rural areas.

b Construction impacts, grading, drainage, clearing, sedimentation, runoff, disturbance of water sheds, etc., during and after construction.

c The impact on local land-use planning; location in relation to recreational areas, parklands, and historical sites; and dividing or disruption of community.

d Impact on pattern of behavior of any wildlife species or interference with wildlife breeding.

e Impact on natural resources.

f The source and path of electrical power supply.

g Areas of cultural or scenic interest.

h For facilities located on airports, the sitings of the facility in relation to other buildings, taxiways, runways, and the electromagnetic interference effects, which may be generated because of their location, are to be assessed.

i Impact of the operational use of those facilities located on or near airports, changes in traffic patterns, and noise generation due to approval of instrument approaches.

j Possible contamination of water supply, treatment facility, or distribution system.

k. *Environmental Descriptor of a Remote Communications Air/Ground (RCAG) Facility* (1) *Introduction.* (a) This descriptor reflects the technical characteristics and the normal environmental impact of a RCAG facility. It does not include the impact with respect to specific geographical locations or individual sites and is not intended to foreclose consideration of the environmental effect of a specific RCAG installation.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, and other known impacts on the environment. The establishment or relocation of facilities used for en route navigation such as the RCAG are among the projects that require an EIS or ND. The environmental impact of these facilities normally result from providing access to the remote facility and constructing the facility itself. The assessment should cover the environmental review procedures set forth in the body of this order as well as this appendix.

(2) *Description of System.* (a) The RCAG provides radio signals for voice communications between the pilot of an aircraft and the air traffic controller in the ARTCC. It is used in those areas where normal coverage cannot be obtained from the communications facilities located at the ARTCC. The RCAG is normally located in an area which is sparsely populated or upon predominant elevations to provide improved and expanded communications coverage. The electronic equipment and engine generator are currently housed in a masonry or metal structure. New RCAG will be housed in prefabricated steel buildings. When an engine generator is included, it may be housed in a separate shelter (powerplant) or within the structure.

(b) All communications antennas are mounted on top of guyed or self-supporting towers which may vary in height up to 120 feet, depending on the surrounding terrain. A RCAG may have as many as four towers. Each tower can accommodate a combination of four receivers or transmitter antennas.

(c) All sites selected for the RCAG must be clear of all obstructions, including future vegetation growth, in an area approximately 120 feet by 120 feet. Local obstructions in the vicinity of the site must not exceed those which will provide a clear unobstructed radio signal propagation path down to two degrees above the horizon, measured at the antenna mounting height.

(3) *RCAG Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Environmental Systems. In each of these buildings, an air-conditioner or ventilating system may be installed. Either system may be installed in accordance with the criteria established in Specification FAA–C–2256a.

2 Electronic Equipment.

a The noise of the associated electronic system in the building is measured in decibels from a point of the highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/1b, Electronic Equipment, General Requirements, Part 1, Basic Requirements for All Equipments. This criteria is described in table 8.

Table 8.—*Noise Levels*

Frequency:								
20	25	150	300	600	1200	2400	4800	
Band Hz:								
75	150	300	600	1200	2400	4800	10000	
Sound Pressure Level dB Re. 0.0002 Microbar								
Air Conditioning:								
69	62	56	50	47	45	43	43	
Electronic Equipment:								
100	89	82	76	73	70	68	67	
Cumulative Measured at a Typical RCAG:								
72	74	77	71	69	63	59	52	

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the electronic equipment. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour workday as defined in subpart G, section 1910.95, of the occupational safety and health standards.

3 Standby Power. If a diesel engine generator of 15 to 20 kW is provided, the greatest noise produced by the standard engine generator is within the engine generator room. Since occupational health standards have been established and the fact that maintenance personnel attending these units are in the engine generator room for limited periods of time, no damaging effect to their hearing has been experienced to date. The impact of the engine generator is that described in the CAND for engine generators.

(b) *Fossil Fuel Emissions.* In order to have a reliable and continuous source of power for communications between the pilot and the ARTCC controller, engine generators provide the standby power for the system in the event of a commercial power failure. The fossil fuel emissions produced by a diesel engine generator are minimal or similar to that of a small automobile engine and can be anticipated to occur only during emergency operations or periods of routine maintenance. The engine generators for the system must meet the operational requirements of Specification FAA–E–2204a, which limits the smoke reading to 4.5 as analyzed by a Bosch analyzing instrument. All fuel tank fill pipes have been modified in accordance with HEW standards to prevent vapor emissions during refueling.

(c) *Light Emissions.* None, except for obstruction lighting, when installed. The intensity of the obstruction light should not be more than 10 candelas of red light. The wattage of the light bulb is 125 watts.

(d) *Electronic Emissions.*

1 Frequencies.

a UHF. 225–400 MHz.

b VHF. 118–136 MHz.

2 Power. High-altitude transmitter—10 or 50 watts.

3 The frequencies are within those assigned to the FAA by the Office of Telecommunications Policy, Federal Communications Commission.

(e) *Construction Impacts.* The impacts associated with the RCAG during the construction period are limited and short term in nature. Construction includes power-operated excavation equipment and vehicles which will produce minor fossil fuel emissions. Construction activity is normally limited to construction of the access road, site clearing, removal of topsoil to adjacent land surfaces, surfacing of the plot area with sterilized gravel to prevent weed growth, and excavation building and tower structures. Normal construction safeguards to minimize erosion are utilized. Assessors should follow the guidelines established in paragraph 326 of this order for consideration of impact on water quality, water resources, and on existing water tables.

(f) *Site Particular Items for Environmental Consideration.*

1 As local conditions warrant, ancillary construction will also be provided to support the RCAG, such as access roads or utilities. In practically all instances, the RCAG is located off airport property. Thus, the assessment is to consider the impacts of this construction and land acquisition as well, in compliance with this order. Under such instances, assessments must be made with reference to paragraphs 327, 328, 329, 330, 332, and 333 of this order.

2 Community continuity impacts and land-use compatibility should be assessed. In addition to NEPA, other Federal laws and directives require that FAA consider environmental and other effects of various actions taken by the agency.

3 The impact of the RCAG on the environment from its operational use should be insignificant, however, the following factors should be considered during the site selection phase and analyzed under the procedural guidance of this order.

a Aesthetic or visual impacts of the siting of any of the facilities on nearby residential or rural areas.

b Construction impacts, grading, drainage, clearing, sedimentation, runoff, disturbance of water sheds, etc., during and after construction.

c The impact on local land-use planning; location in relation to recreational areas, parklands, and historical sites; and dividing or disruption of community.

d Impact on pattern of behavior of any wildlife species or interference with wildlife breeding.

e Impact on recreational areas.

f Impact on natural resources.

g Areas of cultural or scenic interest.

h Possible contamination of water supply, treatment facility, or distribution system.

1. *Environmental Descriptor of a Radar Microwave Link (RML) System.*

(1) *Introduction.* (a) This descriptor reflects the technical characteristics and the normal environmental impact of an RML system. It does not include the impact with respect to specific geographical locations individual sites and is not intended to foreclose consideration of the environmental effect of a specific RML installation.

(b) This order sets forth the procedures and policies for agency compliance with the National Environmental Policy Act (NEPA) of 1969. This appendix requires regional AF divisions to implement environmental procedures associated with all assigned F&E and maintenance projects within the regions, other than those projects for which a CAND has been prepared or have been excepted by this order. An environmental assessment shall be made to determine whether the impact of the action is significant and the preparation of an EIS or ND is appropriate. These assessments shall cover all factors relating to the siting of the facility, and other known impacts on the environment. The establishment or relocation of facilities used for en route navigation such as the RML are among the projects that require an EIS or ND. The environmental impact of these facilities normally result from providing access to the remote facility and constructing the facility itself. The assessment should cover the environmental review procedures set forth in the body of this order as well as this appendix.

(c) The RML is designed to transmit radar data, control information, and voice communications between the radar transmitter/receiver site and the radar display equipment in the ARTCC and/or instrument flight rules (intelligence) by microwave line over a distance greater than line-of-sight, repeaters that receive, amplify, and retransmit the data are required. The average distance between sites used for RML systems is on the order of 20 to 25 miles.

(2) *Description of Components.* (a) *RML Equipment.* This equipment may be housed in either a masonry, fiberglass, or modular constructed building which has a modern commerical or light industrial appearance. The building may vary in size from 6 feet by 8 feet to 10 feet by 24 feet. Exterior colors of the building are selected to blend harmoniously with the surroundings.

(b) *RML Antenna.* The signal transmission antennas are mounted on top of a guyed or self-supporting tower (set on a flush concrete foundation). The guyed tower height may vary from 40 feet to 400 feet and a self-supporting tower which may vary from 20 feet to 150 feet in height.

(c) *Multiplexing Equipment.* This equipment provides the necessary amplifiers, filters, subcarriers, detectors, etc., to enable various information to be transmitted on a given broadband rf channel. There are six rf channels in a typical RMF facility. RF channel I is used for remoting the beacon video and beacon triggers. RF channel II is used for remoting the normal video, moving target indicator (mti) video, and radar trigger. RF channel III is used for remoting the radar antenna azimuth data, maintenance service channel angle marks, voice channels, readback control, and fault alarm tones from the radar site to the ARTCC. RF channels IV and V are provided as spares. RF channel V is used as the return channel for remoting the voice channels, maintenance service channel, controls, and fault alarm tones from the ARTCC to the rate site. The RML system operates in the 7125–8400 Hz frequency.

(d) *Standby Power.* The RML facility may be equipped with emergency engine generator standby power. The engine generator is a 15 kW diesel engine type which is housed in a portable 8 feet by 24 feet van. Standby power is used only under periodic testing or conditions of commercial power disruption. See CAND for engine generators for additional details.

(3) *RML Environmental Impacts (Internal).* (a) *Noise Emissions.*

1 Environmental Systems. An air-conditioner or ventilating system may be installed in the RML equipment building. Either system may be installed in accordance with the criteria established in Specification FAA–C–2256a.

2 Electronic Equipment.

a The noise of the associated electronic system in the building is measured in decibels from a point of the highest noise level at a distance of three feet from the exterior surface of the equipment. The combined noise must not exceed the criteria of Specification FAA–G–2100/1b, Electronic Equipment, General Requirements, Part 1, Basic

Requirements for All Equipments. This criteria is described in table 9.

Table 9.—*Noise Levels*

Frequency:							
20	25	150	300	600	1200	2400	4800
Band Hz:							
75	150	300	600	1200	2400	4800	9600
Sound Pressure Level dB Re. 0.0002 Microbar							
Air Conditioning:							
69	62	56	50	47	45	43	43
Electronic Equipment:							
100	89	82	76	73	70	68	67
Cumulative db(A) at a Typical RCAG:							
69	63	66	63	60	54	46	38

b The cumulative noise level of the air-conditioner and electronic equipment is less than ¼ dB over the air-conditioner. Therefore, the latter is considered as the upper limit noise level. This criteria is within the acceptable level of the damage risk contours for an eight-hour workday as defined in subpart G, section 1910.95, of the occupational safety and health standards.

3 Standby Power. The greatest noise produced by the standard engine generator is within the engine generator room. Since occupational health standards have been established and the fact that maintenance personnel attending these units are in the engine generator room for limited periods of time, no damaging effect to their hearing has been experienced to date. The impact of the engine generator is that described in the CAND for engine generators.

(b) *Fossil Fuel Emissions.* In order to have an adequate energy source for the detecting and controlling air traffic, engine generators provide the standby power for the system in the event of a commercial power failure. The fossil fuel emissions produced by the engine generator are minimal or similar to that of an automobile engine and can be anticipated to occur only during emergency operations or periods of routine maintenance. The engine generators for the system must meet the operational requirements of Specification FAA–E–2204a, which limits the smoke reading to 4.5 as analyzed by a Bosch analyzing instrument. All fuel tank fill pipes have been modified in accordance with HEW standards to prevent vapor emissions during refueling.

(c) *Light Emissions.* None, except for obstruction lighting, when installed. The intensity of the obstruction light should not be more than 10 candelas of red light. The wattage of the light bulb is 125 watts.

(d) *Construction Impacts.* The impacts associated with the RML during the construction period are limited and short term in nature. Construction includes power-operated excavation equipment and vehicles which will produce minor fossil fuel emissions. Construction activity is normally limited to construction of the access road, site clearing, removal of topsoil to adjacent land surfaces, surfacing of the plot area with sterilized gravel to prevent weed growth, and excavation building and tower structures. Normal construction safeguards to minimize erosion are utilized. Assessors should follow the guidelines established in paragraph 326 of this order for consideration of impact on water quality, water resources, and on existing water tables.

(e) *Site Particular Items for Environmental Consideration.* As local conditions warrant, ancillary construction will also be provided to support the RML, such as access roads or utilities. In practically all instances, the RML is located off airport property. Thus, the assessment is to consider the impacts of this construction and land acquisition as well, in compliance with this order. Under such instances, assessments must be made with reference to paragraphs 327, 328, 329, 330, 332, and 333 of this order.

1 Aesthetic or visual impacts of the siting of any of the facilities on nearby residential or rural areas.

2 Site preparation, grading, drainage, clearing, sedimentation, runoff, disturbance of water sheds, etc., during construction.

3 The impact on local land-use planning; location in relation to recreational areas, parklands, and historical sites; and dividing or disruption of community.

4 Impact on pattern of behavior of any wildlife species or interference with wildlife breeding.

5 Impact on recreational areas.

6 Impact on natural resources.

7 Areas of cultural or scenic interest.

8 Possible contamination of water supply, treatment facility, or distribution system.

Appendix 3. Air Traffic

1. *General.* Air traffic personnel are involved in the assessment of aircraft noise resulting from new or revised air traffic control procedures. "Calculation of Maximum A—Weighted Sound Levels Resulting from Civil Aircraft Operations" and the Integrated Noise Model will be used to assist in determining noise impacts.

2. *Environmental Responsibilities.* a. *Regional Offices.* Responsibility for environmental assessment and preparation of EISs and FONSIs may be delegated to field facilities or retained within the regional office, with assistance from the field facilities. Regional offices and field facilities shall provide input to an environmental assessment when requested by Air Traffic Service (AAT) or other services.

b. *Headquarters.* The office originating the proposed system wide action is responsible for making environmental assessments and preparing the FONSIs or EISs. Input may be requested from regional offices and field facilities for an action originating within headquarters.

3. *Environmental Impact Statement or Finding of No Significant Impact.* a. After completion of the preliminary environmental review (noise analyses) the Responsible Official will determine whether the proposed procedure will require an EIS or FONSI or is categorically excluded.

b. If it is determined that the proposed procedure does not require an EIS or FONSI, no further action is required except to retain the documentation of the preliminary environment review.

c. If the proposed procedure is determined to require EIS or FONSI, they shall be prepared in accordance with Chapters 2 and 3 of the Order.

4. *Actions Subject to Environmental Assessments and Procedures.* The following actions are subject to environmental assessment and preparation of an EIS or FONSI.

a. New or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet above the surface.

b. Special use airspace if the floor of the proposed area is below 3,000 feet above the surface or if supersonic flight is anticipated at any altitude. This airspace shall not be designated, established or modified until:

(1) The notice (NPRM or non-rule circularization) contains a statement supplied by the requesting or using agency that they will serve as lead agency for purposes of compliance with NEPA;

(2) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on the environmental aspects can be addressed (applicable only if an EIS is to be filed by the requesting agency);

(3) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on any land-use problems can be addressed (applicable only if special use airspace extends to the surface); and

(4) The rule, determination, or other publication of the airspace action contains a statement, supplied by the

requesting agency, that the requirements of NEPA have been met.

c. The provisions of paragraph b. (1) through (4) are not applicable to special use airspace actions if minor adjustments are made such as raising the altitudes or, if a change is made in the designation of the controlling or using agency.

5. *Categorically Excluded Actions.* a. Determinations under FAR Part 77, "Objects Affecting Navigable Airspace" and determinations under FAR 157, "Notice of Construction, Alteration, Activation and Deactivation of Airports."

b. Procedural actions to the extent covered by a previously filed EIS or FONSI in the establishment of enroute or terminal navigation aids, when environmental circumstances have not changed.

c. Actions taken under FAR Part 71, "Designation of Federal Airways, area Low Routes, Controlled Airspace and REPORTING Points."

d. Actions taken under FAR Part 75, "Establishment of Jet Routes and Area High Routes"; FAR Part 99, "Security Control of Air Traffic"; FAR Part 101, "Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Balloons"; and FAR Part 105, "Parachute Jumping."

e. Establishment or modification of Terminal Control Areas (TCA) or Terminal Radar Service Areas (TRSA).

f. Procedural actions dictated by emergency determinations.

6. *Timing and Length Limits of Environmental Actions.* a. An environmental assessment should be conducted when a procedure is first proposed or coordinated. If the procedure originates within the regional office, it may be necessary to request input from field facilities. This preliminary step will help determine if an EIS or FONSI is appropriate and help identify the scope of environmental objections. If a procedure is found to be controversial, alternative courses of action should be considered or the proposed procedure may be changed to mitigate the environmental impact, so as not to constitute a significant environmental impact.

b. EIS or FONSI action requiring public comment shall provide at least 90 days for that comment while action requiring response to or from other agencies or services will provide 45 days for response.

c. EISs shall normally be less than 150 pages and for procedures of unusual scope or complexity shall normally be less than 300 pages.

Appendix 4. Flight Standards

1. *General.* Flight Standards programs and project actions shall be given proper environmental consideration in accordance with the procedures and guidance contained within this order. These actions are categorized as: excepted from environmental procedures because they are not major Federal actions significantly affecting the quality of the human environment, class FONSIs, or requiring an EIS or FONSI. Documentation of the environmental impact of all actions not categorically excluded by this order is required.

2. *Environmental Responsibilities.* a. The Flight Standards Division Chiefs shall implement the environmental assessment procedures, including developing an EIS or FONSI as appropriate. In the Western Region and European Region, the Chief, Aircraft Engineering Division and Chief, Aircraft Certification Staff, respectively, shall implement actions involving certification of aircraft products and parts. Normally, the division responsible for the action is responsible for the environmental assessment. Division Chiefs may delegate environmental responsibility to appropriate branches or district/field offices, or they may retain the responsibility within the division with assistance from the branches or district/field offices. Regional flight standards divisions shall coordinate with and assist as necessary the airway facilities, air traffic, and airports division and others on those actions involving environmental impacts crossing division lines. The headquarters divisions with assistance from the regions will develop and coordinate class FONSI actions for programs.

b. Documentation, including the analysis of environmental factors, shall be retained in the project folder to substantiate the environmental assessment. This should be prepared for all projects not categorically excluded to support the decision that an EIS or FONSI will be prepared.

c. In the Washington headquarters each EIS and FONSI pertaining to a regulatory project will be prepared for the signature of the Service Director and concurrence signature of AFS-900.

3. *Environmental Impact Statement or Finding of No Significant Impact.* Environmental considerations of Flight Standards actions require assessment of all relevant environmental factors. A decision as to whether the action's impact requires a FONSI or EIS is based on the assessment.

4. *Actions Subject to Environemtnal Assessments and Procedures.* The following Flight Standards actions are subject to environmental procedures, analysis and a decision as to whether to prepare a FONSI or EIS:

a. *Certificates.* New, amended or supplemental aircraft types for which environmental regulations do not yet exist, or new, amended or supplemental engine types for which emission regulations do not yet exist, where an environmental analysis has not yet been prepared in connection with the regulatory action;

b. aircraft/avionic maintenance bases to be operated by the FAA; the program officer is the Chief of Flight Inspection Field Offices, Regional Flight Standards Division Chief or Headquarters Aircraft Programs Division Chief, as appropriate;

c. Regulations and rules (and waivers to regulations and rules) which may affect the quality of human environment;

d. Authorization to exceed Mach 1 Flight under FAR 91.55;

e. Operating specifications and amendments thereto that may significantly change the character of the operational environment of the airport (e.g., first time jet aircraft operations at an airport on a regular scheduled basis). When actions cross regional boundaries, coordination among regions is expected;

f. Pilot training schools certificated under FAR Part 141 and whose anticipated operations at an airport may alter the character of the operational environment of the airport; and

g. New Instrument Approach Procedures, Departure Procedures, Enroute Procedures and Modification to currently approved instrument procedures, which are conducted below 3,000 feet above the surface and which will tend to increase noise over noise sensitive areas. This requires consideration of those operations that will be routinely routed over noise sensitive areas and includes residential neighborhoods; education, health, and religious sites; cultural, historical and recreation areas. A significant increase in noise is based on reduction of distance between aircraft and noise sensitive areas of more than 20 percent.

5. *Cateogrically Excluded Actions.* a. *Certificates.* New, amended or supplemental aircraft type that meet environmental regulations or new, amended or supplemental engine types that meet emission regulations, or new, amended or supplemental engine types that have been excepted by the EPA; where an environmental analysis has been prepared in connection with the regulatory action; medical, airmen, export, manned free balloon type, glider

type, propeller type, supplemental type not affecting noise, emission or waste; mechanic schools, agricultural aircraft operations, repair stations and other air agency ratings;

b. Special flight authorization controlled by operating limitations, FARs 21.193, 21.199, and 91.42;

c. All delegations of authority under section 314 of the FAA Act (49 U.S.C. 1301) e.g., designated examiners and engineering representatives;

d. Approvals of aircraft and engine repairs, parts and alterations not affecting noise, emissions, or wastes;

e. Aircraft and engine certifications or approvals under regulations which have been covered by prior EISs or FONSIs provided there has been no significant change or circumstances;

f. Acoustic change actions that demonstrate compliance with FAR Part 36;

g. Operating specifications and amendments thereto which do not significantly change the character of the operational environment of the airport, including authorizing alternate use of an airport, new use of an airport, or administrative revisions to operating specifications;

h. Regulatory documents which cover administrative or procedural requirements;

i. Regulations, rules, standards, and exemptions (excluding those which if effected may cause a significant impact on the human environment);

j. Instrument Approach Procedures, Departure Procedures, and Enroute Procedures conducted at 3,000 feet or more above the surface; instrument procedures conducted below 3,000 feet above the surface which do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet above the surface that do not significantly increase noise over noise sensitive areas, and increases to minimum altitudes and landing minima. Noise sensitive areas may include residential neighborhoods, educational, health, and religious sites, and cultural, historical and outdoor recreational areas. A significant increase in noise is based on a reduction of distance between aircraft and noise sensitive areas of more than 20 percent;

k. Ongoing actions which are categorically excluded or actions for which FONSIs have been prepared, normally, need only documentation in the project folder that the action is not subject to further environmental consideration. However, should it be determined that a particular action in the above category has a significant impact on the quality of the human environment or is highly controversial, an EIS will be required;

l. Denials of: (1) a petition for exemption, (2) a petition for reconsideration of a denial of exemption; (3) a petition for rulemaking or (4) a petition for reconsideration of a denial of a petition for rulemaking. Exemptions and (TSOs) when they are routine in nature and have no significant environmental impact.

6. *Timing of Environmental Procedures.* Environmental assessments shall be initiated at the earliest practical point in time, along with technical, economic and operational considerations. In order to obtain public participation in the environmental process. A statement will be placed in the preamble of each NPRM which has environmental soliciting comments on the effect of the proposals on the environment. Assessments shall be completed in a timely manner and should not become the pacing item for proposed actions. Length of assessments should be as stated in Section 1502.7 of the CEQR. The EIS or FONSI shall be filed prior to action, for example, in the case of certificates, prior to issuance.

Appendix 5. Logistics

1. *General.* Logistics programs, while basically a service function in support of agency needs or actions initiated by other FAA elements, are subject to the procedures and guidance of this Order. The Logistics Service shall ensure the filing of the EIS or FONSI prior to land acquisition and construction, per Appendix 5, paragraph 4. This section delineates the responsibilities of ALG in processing proposed FAA actions and the categories of actions initiated in ALG which require an EIS or FONSI and those which are categorically excluded.

2. *Environmental Responsibilities.* Through the negotiations and procurement processing of actions proposed by agency element, ALG is responsible for:

a. Converting commitments contained in an EIS or FONSI into contract clauses applicable to completed products, contractor's facilities, performance of services, and land acquisition documents;

b. Negotiating the cost and application of environmental requirements in contracts;

c. Assuring through inspection and review that the contractor meets environmental requirements in the contract, and administers penalty provisions as provided in applicable contract clauses;

d. Assuring that leases, loans, agreements, permits, easements, and any instrument negotiated with respect to donations, condemnations, purchases, or improvements involving real or personal property, and all utility or service contracts, conform with established environmental standards and incorporate pertinent terms relative thereto; and

e. Assuring that no solicitation or proposal for bids for construction or formal contact with property owners for the purpose of initiating negotiations to acquire land shall be made prior to filing an EIS or FONSI, except as provided in Appendix 2, paragraph 6d.

3. *Environmental Impact Statements or FONSIs.* The environmental considerations of ALG actions shall be documented in an EIS or FONSI. An environmental assessment shall be developed along with design or specifications to determine whether the action requires an EIS or FONSI. Preparation of the EIS or FONSI shall be in accordance with Chapter 3 of this Order.

4. *Actions Subject to Environmental Assessments and Procedures.* The agency acquisition of land for and the construction of new office buildings is subject to environmental procedures, assessment and a decision as to whether its impact requires an FONSI or EIS (ALG–200 is responsible for these environmental procedures).

5. *Categorically Excluded Actions.* a. Motor Fleet Management (purchase of new motor vehicles) where such vehicles are obtained from General Services Administration (GSA) under a lease arrangement or through a direct purchase as part of a national buy;

b. Use of space in buildings which are constructed for or controlled by GSA;

c. Lease of existing buildings;

d. Lease of space for a firm term of one year or less;

e. Acquisition of land for an existing leased operational facility.

Chapter 1. Definitions

1. *Council on Environmental Quality (CEQ) Terminology.* CEQ Regulations implementing the National Environmental Policy Act of 1969 (NEPA) were published in the Federal Register November 29, 1978 (43 F.R. 55978–56007, 40 C.F.R. Parts 1500–1508). Part 1508 defines a number of terms used throughout the Regulations and this order and states "The terminology of this part shall be uniform throughout the Federal government." (Hereinafter, references to the CEQ Regulations shall simply identify the paragraph; e.g., CEQ 1508.1.)

2. *Federal Aviation Administration (FAA) Terms.* Order 1000.15A, FAA Glossary, dated December 18, 1975, contains terms which recur most often in agency communications, including several used in airport planning and development.

3. *Airports Program Environmental Definitions.* The following terms used for airport actions are in addition to those defined in CEQ 1508.

a. *Federal Action.* The Federal action as far as the Airports Program is concerned may be any of the following:

(1) Adoption of the National Airport System Plan.

(2) Approval of an airport location.

(3) Approval of an airport layout plan.

(4) Approval of funding for airport development.

(5) Requests for the conveyance of government land under section 23 of the Airport and Airway Development Act of 1970, as amended, (Airport Act) for development or improvement of a public airport.

(6) Approval of release of airport land.

b. *Federal Environmental Approval.* This is a determination by the approving official that the requirements imposed by applicable environmental statutes and regulations have been satisfied by a finding of no significant impact or a final environmental impact statement. It is not an approval of the Federal action.

c. *Finding of No Significant Impact with Section 16(c)(4) Coordination.* This is a finding of no significant impact as defined in CEQ 1508.13 which, because the project involves airport location, a major runway extension, or runway location, must be coordinated with the Department of the Interior (DOI) and the Environmental Protection Agency (EPA) in accordance with the Airport Act, section 16(c)(4).

d. *Written Reevaluation.* This is an evaluation prepared by the FAA responsible official of a draft or final impact statement or a finding of no significant impact with section 16(c)(4) coordination which has exceeded the three-year time limitation specified in paragraph 102 of Chapter 10. This evaluation will either conclude that the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new environmental document.

e. *Approving Official.* This is the official who has the authority to approve findings of no significant impact or final environmental impact statements per Chapters 6 and 9 of this appendix.

f. *Responsible Official.* This is an FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of environmental impact statements, to evaluate the statements, and to take responsibility for the scope and content of the statements. This person may be authorized to evaluate and approve environmental assessments and may direct scoping activities for the FAA.

g. *Decisionmaker.* This is the individual who is delegated authority to approve airport layout plans, approve funding for airport development, or otherwise approve the Federal action.

h. *Sponsor.* This is any public agency eligible to receive Federal financial assistance under the Airport Act or anyone proposing an airport action for which a Federal authorization is required.

i. *Major Runway Extension.* This is a runway extension which upgrades an existing runway to permit usage by noisier aircraft.

j. *Major New Construction or Expansion of Passenger Handling and Parking Facilities.* This is such development on a hub airport that would provide for accommodation of part or whole of an aggregate increase of 25 percent (but not less than 100,000) in enplanements for the forecast period.

k. *Design, Art, and Architectural Application.* Design is the process of arranging physical spaces, materials, and objects to perform specific functions with emphasis on the relationship of the resulting product to human and environmental factors. Design is distinguished from art in that design proceeds from the criteria of the function the facility or object must perform. Design quality is judged by broader criteria than aesthetics alone. Design includes architecture, landscape architecture, graphics, interior design, and engineering. Art includes objects or works of art which are placed in or on an airport facility primarily for aesthetic reasons. Architectural application means the arrangement of structural materials, landscaping, or site development to produce an aesthetically pleasing and functional environment.

l. *NEPA Section 102(2)(D) States.* Such states are those whose agencies or officials have statewide jurisdiction and the responsibility for preparation of environmental impact statements required by NEPA section 102(2)(C) for actions funded under a program of grants to states.

m. *"NEPA-Like" State or Local Agencies.* Such states or agencies are those which are subject to state or local requirements comparable to NEPA requirements for environmental impact statements according to CEQ 1506.2(c). Such agencies, unless specifically barred by other law, shall be joint lead agencies with the FAA and to the fullest extent possible jointly prepare environmental impact statements.

n. *Noisier Aircraft.* For purposes of this order, noisier aircraft are aircraft over 12,500 pounds which are at least three decibels louder than aircraft currently using an airport as measured at one or more of the measuring points used to determine compliance with Federal Aviation Regulations, Part 36.

o. *Project Involving Airport Location.* This is a project for land acquisition or other development by a public sponsor at an airport which has not previously been eligible for Airport Development Aid Program funds because:

(1) It did not exist, or

(2) It was privately owned.

4.–9. *Reserved.*

Chapter 2. General Requirements and Responsibilities

10. *General.* a. Environmental amenities and values shall be carefully considered and weighed, in a timely manner in evaluating all proposed Federal actions relating to airport planning and development, utilizing a systematic interdisciplinary approach and involving local and state officials and individuals having expertise. The environmental assessment and consultation process is to provide officials and decisionmakers, as well as members of the public, with an understanding of the potential environmental impacts of the proposed action. The final decision is to be made on the basis of a number of factors. Environmental considerations are to be weighed as fully and as fairly as nonenvironmental considerations. The FAA's objective is to avoid or minimize adverse environmental impacts that might flow from any proposed Federal action in a manner consistent with the FAA's principal mission to provide for the safety of aircraft operations.

b. Unless excepted by this appendix, an environmental assessment and environmental impact statement or finding of no significant impact is required for all proposed Federal actions related to airports. In accordance with Department of Transportation (DOP) policy and with the CEQ Regulations, it is intended that a single environmental document meet all Federal, state, and local requirements.

11. *Overview of Environmental Process.* a. The process for consideration of the environmental effects of a proposed action involves a number of steps, beginning with the airport proprietor or sponsor. The relative responsibilities of the sponsor

and the FAA are summarized in the following paragraphs. Integration of environmental considerations in early planning and involvement of the public are discussed in Chapter 5. Subsequent chapters present detailed instructions on content, processing, and approval of environmental documents.

b. To facilitate an understanding of the process, a flow diagram (figure 1) is presented at the end of this appendix. Figure 1 is broken down into four sheets:

(1) Sheet 1 depicts the process from identification of the problem by the sponsor, through initial review of the sponsor prepared environmental assessment, to development of the environmental assessment as an FAA document. This sheet also identifies an early decision point on whether or not the action falls in the categorical exclusion category per the listing in paragraph 23. If the FAA determines after initial review of the sponsor's proposal that the action is in this category, no environmental assessment is necessary.

(2) Sheet 2 begins with a key FAA determination based on the environmental assessment as to whether the action requires preparation of an environmental impact statement. If this answer is yes, sheet 2 outlines the process of scoping, developing, and processing of a draft environmental impact statement by FAA through review of comments and preparation of the proposed final document.

(3) Sheet 3 describes the process if it is determined that an environmental impact statement is not necessary. In this case, it is first determined if limited Federal agency coordination is necessary pursuant to section 16(c)(4) of the Airport Act. In this case, a proposed finding of no significant impact is prepared, coordinated, and approval action taken as indicated in the flow diagram. Otherwise, a finding of no significant impact may be prepared and approved without further coordination. A final decision on the action is then made after environmental approval.

(4) Sheet 4 is a continuation of Sheet 2. It represents the environmental and funding approval processes for actions which have required the preparation of an environmental impact statement. Environmental approval action is taken in either headquarters or the region depending on approval authority as described in paragraph 95 of this appendix. A final funding decision is made subsequently and must include a record of decision incorporating assurances and mitigation measures identified in the environmental impact statement (reference paragraph 98). The funding decision may also be made in headquarters or the region depending on approval authority. Note that the environmental and funding approvals are not necessarily made at the same level or by the same official. These distinctions are made in the flow diagram and in the definitions in Chapter 1, paragraphs 3e and g.

12. *Sponsor's Responsibility.* Sponsors of airport projects are responsible for identifying the problem, developing conceptual alternatives, and preparing an environmental assessment as more fully explained in Chapter 5 of this appendix. In the Airports Program, an environmental assessment prepared by the sponsor will systematically examine each potential impact to determine whether it exceeds a predefined level of significance. The document shall be developed in coordination with appropriate local, state, and Federal agencies, with community involvement as described in this appendix and in direct consultation with FAA. It is important that the material contained therein be objective, complete, and accurate in order for it to serve as the basis for the preparation of the FAA's environmental documents. The sponsor's responsibility also extends to providing additional data and information to the FAA when required to assist in its review of environmental impacts and in the preparation of environmental documents. The environmental assessment document must draw upon all the appropriate disciplines of the natural and social sciences and the environmental design arts.

13. *FAA Responsibility.* In brief, under the Airports Program the FAA is responsible for analyzing the environmental impacts and consequences of any proposed Federal action involving airports for the environmental assessment and impact documents, and ultimately for approving or disapproving the environmental documents and the Federal action. Although an environmental assessment submitted by an airport sponsor may be used in whole or in part, the FAA is responsible for the facts, opinions, and judgments upon which the environmental determination is based. It is, therefore, incumbent upon the FAA to assure that all documentation presents a full, accurate, and fair assessment of the environmental consequences of the proposed action.

14. *Use of Contractors.* Contractor consulting services may be used to prepare environmental assessments and impact statements. They may also be used to prepare background or supplemental material and otherwise assist in preparing a draft or final environmental document for which the FAA takes responsibility. If contractors are to be involved, see paragraph 76 of this appendix for details.

15. *Role of Lead and Cooperating Agencies.* The various roles of the lead agency are described in CEQ 1501.5 through 1501.8. CEQ 1501.5 generally describes the role of the lead agency when more than one agency is involved in an action. CEQ 1501.6 describes the relationship with cooperating agencies. CEQ 1501.7 and 1501.8 define the role of the lead agency in the scoping process and in setting time limits. More specific information on the involvement of the lead and cooperating agencies in the preparation of environmental impact statements is contained in paragraphs 74 and 75 of this appendix.

16. *Preparation of Environmental Documents.* Responsibilities and authority of the FAA, state agencies, and local agencies will vary from state to state depending upon the state or local requirements, jurisdictional responsibilities, and expertise. This is discussed in Chapter 7 of this appendix.

17. *Early NEPA Involvement in Planning.* In accordance with the spirit and intent of NEPA, environmental considerations should appear early in the planning process. Chapter 5 discusses the implementation of this requirement in airport planning.

18. *Public Involvement.* While most requests for Federal airport actions originate with a local public agency, the involvement of the community at large is a necessary element in the decisionmaking process. Communities, organizations (such as environmental, conservation, aviation and airspace user, public service, education, labor or business organizations), and other individuals affected by airport proposals submitted to the FAA shall be provided an effective opportunity to comment at all appropriate stages in the decisionmaking process and, in all cases, they shall be provided an opportunity to review and comment on draft and final statements. In accordance with section 16(d) of the Airport Act, the opportunity for public hearings must be offered on any action involving location of a new airport, location of a new runway, or extension of a runway. For other actions, a public hearing should be considered in accordance with the guidelines contained in paragraph 49 of this appendix. FAA Advisory Circular 150/5050-4, Citizen Participation in Airport Planning, has additional specific guidance on community involvement.

Standard procedures for Federal agency public involvement are stated in CEQ 1506.6.

19. *Reserved.*

Chapter 3. Environmental Action Choices

20. *General.* a. In the Airports Program, Federal actions which require environmental processing generally involve the approval of specific projects at specific airports. A series of projects may be grouped into an overall plan for development, with successive phases being contigent upon other events such as a projected increase in traffic or a change in the aircraft using the airport. Such programs for development will usually be the subject of tiered environmental actions (see paragraph 101 and CEQ 1508.28).

b. On occasion, such as for the development of a new National Airport System Plan which is based upon new criteria for the inclusion of airports in the plan, an environmental impact statement is required. This action is the adoption of a formal plan upon which future agency actions will be based.

c. All Federal actions fall in one of three categories:

(1) Those normally requiring an environmental impact statement (CEQ 1508.11).

(2) Those requiring an environmental assessment (CEQ 1508.9).

(3) Those which are normally categorically excluded (CEQ 1508.4).

21. *Actions Normally Requiring an Environmental Impact Statement.* a. The following Federal actions will normally require an environmental impact statement:

(1) Adoption of a new National Airport System Plan which is based upon significantly different criteria for inclusion of specific airports from that criteria used in the previous plan.

(2) Airport location approval (see paragraph 32) or first time airport layout plan approval (see paragraph 30) for an air carrier airport located in a standard metropolitan statistical area.

(3) A new runway capable of handling air carrier aircraft on an air carrier airport in a standard metropolitan statistical area.

b. Even though these actions normally require an environmental impact statement, the preparation of the environmental impact statement will usually be preceded by an environmental assessment. If the environmental assessment demonstrates that there are no significant impacts and if the action does not meet any of the criteria listed in paragraph 24, the action may be processed as a finding of no significant impact instead of an environmental impact statement.

22. *Actions Normally Requiring an Environmental Assessment.* a. Federal financial participation in, or airport layout plan approval of, the following categories of development actions must be subject to the analysis of an environmental assessment and subsequent decision as to whether to prepare an environmental impact statement or a finding of no significant impact.

(1) Airport location.

(2) New runway.

(3) Major runway extension.

(4) Runway strengthening which would permit use by a noisier aircraft than that for which the pavement was previously designed.

(5) Major new construction or expansion of passenger handling or parking facilities with Federal funding.

(6) Land acquisition associated with all the above items plus any land acquisition which causes relocation of residential or business activities or involves land covered under section 4(f) of the Department of Transportation Act of 1966, as amended (hereinafter section 4(f)).

(7) Establishment or relocation of an instrument landing system, an approach lighting system, or runway end identification lights (when airport development aid funds are used).

(8) Any airport development action that falls within the scope of paragraph 24 or which involves any of the following, as more particularly described in paragraphs 47e and 85.

(a) Use of any section 4(f) land.

(b) Effect on property included in or eligible for inclusion in the National Register of Historic Places or other property of state or local historical, architectural, archeological, or cultural significance.

(c) Wetlands, coastal zones, or floodplains.

(d) Endangered or threatened species.

b. FAA requests for conveyance of government land for airport purposes under section 23 of the Airport Act (see paragraph 34 for more detailed instructions).

c. Federal release of airport land (see paragraph 35).

d. The actions identified in this paragraph must be supported through one of the following action choices based upon an environmental assessment.

(1) Fully coordinated environmental impact statements.

(2) Findings of no significant impact (see paragraphs 27 and 28).

e. Actions identified in this paragraph may be the subject of prior approval affirmations of previously approved environmental impact statements or findings of no significant impact. (See paragraph 29.)

23. *Categorical Exclusions.* The following list of FAA airports projects and program actions are categorically excluded except where specifically identified or covered by conditions set forth in paragraph 21 or 22.

a. Runway, taxiway, apron, or loading ramp construction or repair work including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, except where such action will create environmental impacts off airport property.

b. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems.

c. Installation of miscellaneous items including segmented circles, wind or landing direction indicators or measuring devices, or fencing on airport property.

d. Construction or expansion of passenger handling or parking facilities including pedestrian walkway facilities.

e. Construction or repair of entrance and service roadway within airport property and any relocation of these type roads except where they connect to a public highway or street.

f. Grading or removal of obstructions on airport property and erosion control actions with no off-airport impacts.

g. Landscaping and construction of physical barriers to diminish impact of airport blast and noise.

h. Land acquisition associated with any of the above items.

i. Acquisition of: noise suppression or measuring equipment, security equipment required by rule or regulation for the safety or security of personnel and property on the airport (14 C.F.R. Part 107), safety equipment required by rule or regulation for certification of an airport (14 C.F.R. Part 139) or snow removal equipment.

j. Issuance of airport planning grants.

k. Airport Development Aid Program actions which are tentative and conditional and clearly taken as a preliminary action to establish a sponsor's eligibility under the Program.

l. Retirement of the principal of bond or other indebtedness for terminal development.

m. Issuance of airport policy and planning documents including advisory circulars on planning, design, and development programs not intended for direct implementation or issued by FAA

as administrative and technical guidance to the public.

n. Issuance of certificates and related actions under the Airport Certification Program (14 C.F.R. Part 139).

o. Advisory actions as described in paragraph 25 of this chapter.

p. Any items identified in other appendices of this order as categorical exclusions. These items are not normally included in airport actions. There may be circumstances when such items, especially those associated with airways facilities, may be shown on an airport layout plan or included in an airport development action.

24. *Extraordinary Circumstances.* Any proposed Federal actions, including those which are normally categorically excluded, which have any of the following characteristics shall be the subject of an environmental impact statement:

a. Any action that has an effect that is not minimal on properties protected under section 106 of the Historic Preservation Act of 1966, as amended, or section 4(f).

b. Any action that is likely to be highly controversial on environmental grounds; i.e., those areas of environmental consequences identified under paragraph 47e. A proposed Federal action is considered highly controversial when the action is opposed by a Federal, state, or local government agency or by a substantial number of the persons affected by such action on environmental grounds. If the responsible official has any doubt as to whether a given number of opposing persons is "substantial," that doubt should be resolved by discussion with APP-600 to determine if the action should be processed as a highly controversial one.

c. Any action that is likely to have a significant impact on natural, ecological, cultural, or scenic resources of national, state, or local significance, including endangered species, wetlands, floodplains, coastal zones, or prime and unique farmland.

d. Any action that is likely to be highly controversial with respect to the availability of adequate relocation housing. In an action involving relocation of persons or businesses, a controversy over the amount of the acquisition or relocation payments is not considered to be a controversy with respect to availability of adequate relocation housing.

e. Any action that:

(1) Causes substantial division or disruption of an established community, or disrupts orderly, planned development, or is determined to be not reasonably consistent with plans or goals that have been adopted by the community in which the project is located; or

(2) Causes a significant increase in surface traffic congestion.

f. Any action that:

(1) Has a significant impact on noise levels of noise sensitive areas;

(2) Has a significant impact on air quality or violates the local, state, or Federal standards for air quality;

(3) Has a significant impact on water quality or may contaminate a public water supply system; or

(4) Is determined to be inconsistent with any Federal, state, or local law or administrative determination relating to the environment.

g. Other action that directly or indirectly affects human beings by creating a significant impact on the environment.

25. *Advisory Actions.* Some Federal actions, such as airspace actions, are of an advisory nature and are neither permissive nor enabling. Actions of this type are not ordinarily major Federal actions, and environmental assessments or statements are not required as a condition for accomplishing the action. If it is known or anticipated that some subsequent Federal action would require processing in accordance with environmental procedures, the advisory action should so indicate.

26. *Cumulative Impact.* In determining whether an environmental impact statement is required for a proposed Federal action, it is necessary to consider the overall cumulative impact of the proposed action and the consequences of subsequent related actions. This is important because the effect of a number of decisions about a complex of projects can be individually limited to the extent that a finding of no significant impact or categorical exclusion would appear to be appropriate for each project; however, when considered together, the projects may have a considerable cumulative impact. In both environmental assessments and environmental impact statements, the total proposal must be considered—that is, the proposed action and all other actions functionally related to it. Actions are functionally related if:

a. The future action is an expansion of the present project or facilitates the present proposal or is necessary to complete the project, or

b. The present proposal facilitates or is a necessary prerequisite to the future action.

For further detail on the treatment of present and related future actions, see Chapter 10. Also, see CEQ 1508.7 for more on cumulative impact.

27. *Findings of No Significant Impact Requiring Airport Act Section 16(c)(4) Coordination.* a. This action choice occurs when the proposed action involves the location of an airport, the location of a runway, or the major extension of a runway but does not have consequences bringing it within the scope of paragraph 24. A finding of no significant impact must be supported by an environmental assessment, prepared in accordance with Chapter 5 of this appendix, substantiating the determination that the proposed action will not significantly alter the airport's impact on its surrounding environment and is not highly controversial on environmental grounds.

b. Pursuant to section 16(c)(4) of the Airport Act, DOI and EPA must be consulted even in circumstances where a finding of no significant impact is appropriate. Both agencies should be forwarded a copy of the finding of no significant impact (and environmental assessment) and advised that, although the project is not expected to significantly affect the quality of the human environment, they are being consulted pursuant to section 16(c)(4).

c. FAA processing and approval of this action choice are described in Chapter 6.

28. *Other Findings of No Significant Impact Actions.* This action choice applies to those projects which do not have circumstances bringing them within the scope of paragraph 24 or 27 and which are not categorically excluded under paragraph 23. Content, processing, and approval of this action choice are described in Chapter 6.

29. *Supplements.* The choice of preparing a supplement to a previously prepared draft or final environmental impact statement or to a finding of no significant impact with section 16(c)(4) coordination will be appropriate in some instances of tiering, when significant changes occur affecting the validity of previously prepared documents, and when significant new information is brought to light. Chapter 10 discusses the requirements, processing, and approval of supplements.

Chapter 4. Special Instructions

30. *Airport Layout Plan Approvals.* a. *Applicability.* This paragraph applies to items of development identified in paragraphs 21 and 22a approved for the first time by FAA after January 1, 1970, on a new or revised airport layout plan.

b. *General.* Proposals to construct new runways, runway extensions, terminal buildings, or other major and

supportive development are shown on an airport layout plan. Inclusion on the plan signifies that the proposed development has been identified by public sponsors for planning purposes. It does not represent a commitment by the sponsor to implement the indicated development. FAA reviews the planned development with respect to safety, efficiency, utility, and environmental impact. FAA's action does not represent a commitment to provide financial assistance to implement the proposed plan. Environmental documents for airport layout plan approvals are subject to tiering as explained in detail in paragraph 101b(4). Tiering results in either an unconditionally or a conditionally approved airport layout plan.

c. *Approval.* (1) When all items of development covered by paragraphs 21 and 22a of this appendix have been the subject of environmental approvals pursuant to the provisions of this order, the airport layout plan may be approved unconditionally.

(2) When such environmental action has not been completed, the airport layout plan may be approved subject to the following condition which shall be included in the airport layout plan approval letter:

"The approval indicated by my signature is given subject to the condition that the proposed airport development identified by item herein as requiring environmental processing may not be undertaken without prior written environmental approval by the FAA."

(3) The approval letter will identify, by item, those items shown on the airport layout plan which are covered by paragraphs 21 and 22a which have not yet been environmentally approved by FAA.

(4) The FAA approval of an airport layout plan shall be indicated as follows:

(a) The FAA unconditional approval shall be shown on the face of the airport layout plan by use of the term "approved."

(b) The FAA conditional approval shall be shown on the face of the airport layout plan by use of the term "conditionally approved," and cross-reference the airport layout plan approval letter.

31. *Planning Grants.* a. Planning grants are not considered major Federal actions for purposes of section 102(2)(C) of NEPA. neither are planning grants considered to be airport development projects for purposes of the Airport Act, section 16(c)(4). Therefore, a finding of no significant impact or an environmental impact statement is not required for issuance of the grant. However, environmental considerations should be included as an integral part of master planning. The airport layout plan, which is one element of a master plan, is the vehicle through which the FAA acts with respect to airport planning and which is subject to the requirements in paragraph 30. Environmental actions may be taken to cover either the ultimate plan as developed by the study or stages of such development, depending on the independent utility of each stage and the certainty of ultimate development. Two major elements of an environmental assessment—noise and land use—are included in studies conducted under a planning grant for airport noise control and land use compatibility.

b. In the context of airport development, public meetings or other planning meetings held in conjunction with master planning may be expanded to incorporate some of the principles of scoping as described in paragraph 74 of this appendix, especially when it is reasonable to expect that the master plan will identify needed development which has the potential for significant environmental impacts.

32. *Airport Location Approval.* An airport development aid project for construction or land acquisition may not be approved unless the airport site is approved by the FAA. Federal approval of a proposed airport location is always preceded by an environmental action. If location selection is made as an initial phase of a master planning study, the environmental assessment must take into account enough of the ultimate planned development to assure that, with the best available information, the selection is based upon considerations that the need for and benefits of future development of the site outweigh any adverse environmental impacts. Existing privately or publicly owned airports that are included in the National Airport System Plan but have never received location approval are required to have said approval prior to receiving first time Federal aid. this location approval must be supported by the appropriate environmental action.

33. *Land Acquisition.* Public sponsors may have the authority to acquire land adjacent to existing airports or for new airports without prior approval by the FAA. Such action could prejudice or preclude a favorable decision by the FAA on proposed changes in airport layout or development which would use the land thus acquired or on requests for reimbursement for the property. When FAA is notified or becomes aware of a possibility that such a situation may be occurring, FAA will advise the public sponsor that such actions must be consistent with pertinent environmental policy as expressed in this appendix, that the manner in which the particular property was acquired will be carefully considered by the FAA prior to approval of any future FAA action involving the property, and that particular attention will be given by the FAA to its responsibilities under section 4(f) to insure that a special effort is made to preserve the natural beauty of the countryside, public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. Particular attention will also be given by the FAA to actions by a sponsor involving wetlands, floodplains, coastal zones, endangered species, properties in or eligible for inclusion in the National Register of Historic Places, and the provisions of Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. A sponsor who has acquired land without prior approval by the FAA must demonstrate to the satisfaction of the FAA that his action was consistent with the policies expressed in this appendix and has not prejudiced full and objective consideration of alternatives or actually precluded possible implementation of a preferable alternative.

34. *Conveyances of Land.* a. Airport sponsors may request conveyance of govenment owned land under section 23 of the Airport Act for the development, improvement, or future use of a public airport. This covers land for a new airport, expansion of an existing airport, protection of aerial approaches, and future airport projects. FAA Order 5170.1, Transfer of Federal Lands, Section 23, of the Airport and Airway Development Act of 1970, contains FAA's procedures for such land transfers. The sponsor will normally be required to include with the request to FAA for the land an environmental assessment in accordance with Chapter 5 of this appendix. An environmental assessment will not be required if the use of the land falls within the scope of paragraph 23, Categorical Exclusions. The FAA responsible official will consult with the Federal agency controlling the land to assure that environmental documentation meets the needs of the controlling agency as well as of the FAA. If an environmental impact statement is required, the FAA may act as either joint lead agency with the controlling agency or as a cooperating agency with jurisdiction by law and may request further information

from the sponsor in order to complete the analysis of significant impacts as indicated in Chapter 8.

b. The FAA may include environmental mitigation measures as covenants in the deed or patent which finalize the transfer of the land or in an Airport Development Aid Program grant agreement for a project on the land. The FAA will follow the guidance in paragraph 99 in determining whether to impose mitigation measures.

c. FAA Order 5170.1 instructs "Where there is other Government land adjoining that which is being requested for an airport, an easement interest should be requested as necessary to protect the airport. This involves sufficient control to clear and protect the aerial approaches to the airport, to maintain freedom from electronic interference, or smoke-producing activities, and the right to overfly any land *or any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport*" (underscoring added). The FAA responsible official shall pay particular attention to recommending that the FAA request such additional land as allowed and as determined necessary for compatible land use.

35. *Releases of Airport Land.* a. When a sponsor accepts a Federal airport development grant or a conveyance of Federal surplus property for airport purposes, he incurs specific obligations with respect to the uses of the property. FAA action is required to release a sponsor from his obligations in the event he desires to sell any of the airport land. This action requires an appropriate environmental assessment in accordance with the provisions of this appendix. The assessment must address all known and immediately foreseeable environmental consequences of the release action and, as with all Federal actions regarding land, appropriate coordination with Federal, state, or local agencies should be completed for any applicable areas of environmental consideration (e.g., historic and archeologic site considerations, section 4 (f) lands, wetlands and coastal zones, endangered species). In all cases, coordination with the State Historic Preservation Officer is required.

b. In making the final determination, the responsible Federal official shall consider the effects of any covenants which will encumber the title and the extent of Federal ability to enforce these covenants subsequent to the release action. The standard conditions of release relative to the right of flight, including the right to make noise from such activity and the prohibition against erection of obstruction or other actions which would interfere with flight of aircraft over the land released, may be considered as mitigating factors in the environmental assessment especially as regards noise impacts and land use compatibility. When the intended use of released land is consistent with uses described and covered in a prior environmental assessment, the prior data and analysis may by used as input to the present assessment. When the conditions as set forth in Chapter 10 apply, a prior approval affirmation may be used by support the property release.

c. In some cases, another Federal agency may be the lead agency and responsible for the preparation of an environmental assessment and environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of CEQ 1506.3.

d. Long term leases which are not related to aeronmental activities or airport support services (i.e., convenience concessions serving the public such as shelter, ground transportation, food and personal services) and which require the FAA's consent for the conversion of dedicated airport property to the status of revenue producing property have, for all practical purposes, the effect of a release and shall be subject to an environmental assessment. Long term leases are normally those exceeding 20 years.

36.–39. *Reserved.*

Chapter 5. Early Planning, Preparation of Environmental Assessments, A–95 Review, Public Hearings

40. *Initiation of Environmental Process.* The environmental process begins at the local level with the airport sponsor. An overview of the process is discussed in paragraph 11 and a flow diagram is presented in figure 1 at the end of this appendix with the steps numbered for ease of reference. CEQ 1501.2 states "Agencies shall intergrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." At this early point in time, the sponsor may be engaged in any one of the following activities which may be expected to result in a Federal action:

a. An airport master planning study (presumably leading eventually to approval of a new or revised airport layout plan or of a grant for construction).

b. An airport site selection study.

c. A new airport layout plan or a revision.

d. Formulation of an airport development project.

e. Plans to obtain government land for airport purposes through a conveyance under section 23 of the Airport Act.

f. Plans to obtain a release of airport land.

41. *Sponsor's Planning Process.* a. *General.* Steps 1, 2, and 3 in figure 1 indicate the minimum action that is expected from the sponsor to start the process. The sponsor identifies a problem and develops conceptual alternatives to solve it. These first three steps may involve a considerable amount of effort. In the case of a master planning study, for example, the identification of the problem would involve the inventory, forecasts, demand/capacity analyses, and the determination of facility requirements. The possible alternative ways in which the facility requirements could be met would constitute the planning alternatives. From these alternatives, the sponsor may make a choice which is identified as the proposed action. In choosing among alternatives, environmental factors play a role. CEQ 1501.2(b) states "Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses." Consequently, in developing alternatives and in choosing a proposed course of action environmental feasibility should influence choices, as should safety, economic, and technical feasibility. The amount of environmental detail at this early planning stage should be commensurate with other planning analyses being undertaken by the sponsor and will obviously vary greatly between a comprehensive master planning study, for example, and a small development proposal. Whether it is possible at this stage for the sponsor to choose a proposed action among alternatives depends upon the type and complexity of the problem. If the identified problem is lack of sufficient airfield runway capacity or need for a new airport, the alternatives may be numerous and sufficiently complicated to preclude an obvious solution at this early stage. On the other hand, a problem such as providing additional apron space or locating a crash/fire/rescue building may be simple enough that relatively little effort is required to

identify the problem, explore the relatively limited options, and choose the proposed action.

b. *Design, Art, and Architectural Application.* (1) Airport actions involving airport location; extensive earthmoving or other disruption of the natural environment or aesthetic integrity of an area; terminal and access road development; and any development which may affect sensitive locations such as parks, historic sites, or other public use areas shall consider the application of design, art, and architecture. Such considerations shall be reflected in any environmental assessment prepared to the extent relevant.

(2) Applicability may best be determined by early consultation with appropriate local or state art or architecture councils or other organizations having special interest or experience in design, art, and architecture. The environmental assessment shall reflect such consultation which may be made directly or through the A-95 clearinghouse coordination.

(3) Consideration of the design arts in the preliminary design stage of project development is encouraged and shall be reflected in the environmental assessment to the extent information is available. Emphasis should be placed on design factors which will complement and support establishment of functional, efficient, and safe airport facilities while reflecting local, cultural, and architectural heritage considerations.

(4) Examples of the application of design, art, and architecture in airport actions include the following:

(a) The adverse effects of encroachment into residential or recreational areas or disruption of scenic vistas may be minimized through appropriate design considerations. Architectural treatment of facilities can reflect and blend in with nearby architectural style. Painting or shielding of structures such as landing aid supports may reduce adverse visual impact as long as there is no interference with the safe performance of the facility.

(b) Actions which involve extensive earthmoving may create disruption of the landscape which is visible from great distances. Normal application of sound design and engineering principles will assure the control of erosion and provide adequate drainage. Extra care in slope design and plantings will help minimize adverse visual and other environmental impacts.

(c) Relocation of streams or other water courses in channels which reflect the natural characteristics of the existing stream may be more aesthetically pleasing and cost less than replacement by concrete sluiceways. Bank stabilization by appropriate plantings may improve appearance as well as control erosion.

(d) New facilities or major terminal expansion may provide an excellent means to recognize and reflect notable architectural, cultural, or ethnic assets of the area. Such influences may be reflected in interior design, landscaping, or architectural treatment.

(5) Whether or not a particular airport action requires the preparation of an environmental assessment, airport sponsors are encouraged to apply the principles of good design, art, and architectural treatment in anything they do which affects interface between the airport facilities and the public they serve. To facilitate a better understanding of such policy and to provide advice, the FAA has available through its regional offices a slide/sound presentation entitled "First and Lasting Impression" and a companion report "Design, Art and Architecture—A Study of Airports."

42. *FAA's Initial Advice and Review.* FAA personnel in regional offices and airports district offices will advise sponsors during the planning process. The locations and phone numbers of these offices are contained in Advisory Circular 150/5000-3D (or subsequent updates). The FAA's first required environmental review is indicated in step 4 of figure 1. This review has two basic objectives. The first objective is to determine whether the FAA agrees that a problem exists, that the problem has been correctly identified, and that appropriate alternative solutions have been proposed. CEQ 1502.4 and 1508.25 will be used by the FAA in evaluating whether the proposal has been properly defined and whether the appropriate range of actions and alternatives is being considered. If the FAA is not satisfied, further consultation with the sponsor will be undertaken to resolve areas of disagreement. The second objective of this review is to determine whether the proposed action is one of categorical exclusion. Paragraphs 23 and 24 shall both be examined before a final determination is rendered by the FAA that a proposed action is a categorical exclusion. A categorical exclusion requires no further environmental processing, and the proposed Federal action may be approved by the FAA decisionmaker.

43. *Requirement for Environmental Assessment.* All proposed actions which are not categorical exclusions require an environmental assessment prepared by the airport sponsor. An environmental assessment is defined in CEQ 1508.9 and further elaborated on in 1501.3 and 1501.4. The completion of an environmental assessment shall normally precede the FAA's decision to prepare an environmental impact statement since the environmental assessment is a document used by the FAA to determine whether potential impacts appear to be significant per paragraph 47e. There are proposals, however, which normally require the preparation of an environmental impact statement per paragraph 21 or on which the FAA and the sponsor agree initially that impacts will be significant. In these cases, the FAA and sponsor may determine that the scoping process should not await completion of the environmental assessment. For these proposals, the sponsor's preparation of the environmental assessment shall be done concurrently with scoping as allowed in CEQ 1501.7(b)(3). If tiering is involved, sponsors should consult Chapter 10 of this appendix and request special advice from the FAA prior to preparing an environmental assessment.

44. *FAA Role in Environmental Assessment.* The environmental assessment process is shown in steps 7 through 12 of figure 1. The FAA has responsibility in four ways:

a. Advice and assistance to the airport sponsor during the environmental assessment preparation.

b. Review of the environmental assessment (per step 8 of figure 1) to determine its adequacy for a public hearing and review pursuant to Office of Management and Budget (OMB) Circular A-95 (Revised). At this time, the FAA will insure that the cover page of the environmental assessment contains a notification that the environmental assessment has been prepared by the sponsor and that it will become a Federal document only after it is evaluated and signed on the cover page by the FAA responsible official.

c. Final review of the environmental assessment (per step 12 of figure 1) at which point the FAA independently evaluates and takes responsibility for the environmental assessment per CEQ 1506.5(b). If not satisfied with the environmental assessment, the FAA may request the sponsor to correct deficiencies and resubmit it.

d. The decision to prepare either an environmental impact statement or a finding of no significant impact (step 13 of figure 1) based on final review of the environmental assessment and completion of certain impact categories

as necessary to make judgments on the significance of anticipated impacts.

45. *Early Coordination.* CEQ 1501.4(b) states, "The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing [environmental] assessments . . ." and in section 1506.2(b) "Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law." Early coordination with appropriate Federal, State, and local agencies, industry groups, environmental agencies, and the community in the environmental assessment process is a responsibility of the sponsor. Such coordination shall be initiated as appropriate during the sponsor's planning process and development of alternatives and continue during the preparation of the environmental assessment prior to the formal coordination that takes place during the A-95 review process. Early coordination can serve a number of purposes. It is an aid in the identification of environmental impacts and can help trigger advance planning of measures to mitigate environmental effects, including changes in project design. The community can be provided with timely information and have its opinions heard at the earliest formative stage of the project, which may avoid serious controversy later on. The amount of early coordination advisable will depend on the complexity, sensitivity, and anticipated environmental impacts of the proposal. Information received during early coordination may be used in the environmental assessment.

46. *Purposes of Environmental Assessment.* CEQ 1508.9 indicates that the environmental assessment is a concise document. It is the FAA's intention to adhere strongly to this instruction and to require only enough analysis in the environmental assessment for the following purposes:

a. To understand the problem and identify reasonable alternative solutions, including the proposed action (if the sponsor has chosen an action among the alternatives).

b. To determine whether any potential impacts are significant, which would trigger the environmental impact statement process.

c. To provide the basis for the FAA's finding of no significant impact if the proposed action has no significant impacts.

d. To identify and satisfy special purpose Federal laws, regulations, and executive orders relevant to the proposal per paragraph 47e.

e. To identify and satisfy State and local laws and regulations applicable to the proposal.

f. To identify any permits, licenses, or other entitlements required by the proposal.

g. To indicate agencies consulted (and to identify cooperating agencies for environmental impact statement preparation purposes).

47. *Format and Content of Environmental Assessment.* The environmental assessment shall incorporate some selected items of information required for an environmental impact statement in CEQ 1502.10. The information in the environmental assessment will, however, be in more abbreviated form than in an environmental impact statement. The following information is required.

a. *Cover Sheet.* This page is labeled "Environmental Assessment," identifies the airport, indicates that the environmental assessment was prepared by the airport sponsor (or for the sponsor by a contractor), and has the following notification at the bottom:

"This environmental assessment becomes a Federal document when evaluated and signed by the responsible FAA official.

Responsible FAA Official
Date"_____

b. *Purpose and Need.* This section shall identify the problem, the requested Federal action, and the timeframe for such action. Relevant statistical information supporting the fact that a problem exists shall either be included here or appended. Current and projected activity statistics shall be provided.

c. *Alternatives (Including Proposed Action).* (1) The CEQ Regulations include specific directions on the consideration of alternatives. While these directions are concerned with the environmental impact statement, they are also applicable to an environmental assessment, although in less finished detail than in an environmental impact statement. Applicable CEQ sections are:

(a) *Section 1502.1.* The environmental impact statement ". . . shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."

(b) *Section 1502.2(e).* "The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker."

(c) *Section 1502.14.* The environmental impact statement ". . . should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."

(d) *Section 1502.14(a).* Agencies shall "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."

(e) *Section 1502.14(b).* Agencies shall "Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

(f) *Section 1502.14(c).* Agencies shall "Include reasonable alternatives not within the jurisdiction of the lead agency."

(g) *Section 1502.14(d).* Agencies shall "Include the alternative of no action."

(h) *Section 1502.14(f).* Agencies shall "include appropriate mitigation measures not already included in the proposed action or alternatives."

(2) The FAA responsible official shall apply the above CEQ directions and shall judge whether the alternatives put forward by the sponsor are sufficient for the environmental assessment. The range of alternatives considered shall be commensurate with the identified problem and the anticipated impacts. As a minimum, the no action alternative shall be considered. Low capital or noncapital alternatives such as the development and upgrading or reliever/satellite airports, the establishment of quotas, and the use of pricing systems shall be considered for proposed actions involving the additional of airfield capacity to high activity air carrier airports where there exists one or more of the following constraints—safety, airspace limiations, land limitations, airport ground access, environmental impacts, financial limitations, political constraints.

(3) The Alternatives section of the environmental assessment shall include:

(a) A list of alternatives considered, including the proposed action, with only enough description to comprehend them. For each alternative, any connected or cumulative actions shall be included (CEQ 1508.25(a)(1) and (2)).

(b) Identification of the sponsor's proposed action if one has been chosen.

(c) A concise statement explaining why any initial planning alternatives have been eliminated from study.

(d) A listing under each alternative of any areas of potential significant impact or a statement that the alternative has no significant impacts per the threshold analyses performed under paragraph 47e. The environmental assessment shall indicate whether an alternative is being analyzed on the basis of mitigation measures assumed to be built into it.

(e) A listing under each alternative of any applicable Federal, state, or local special purpose laws and regulations and potential required permits and licenses.

(f) Graphics as appropriate to aid in understanding the alternatives. These would be of value in showing alternative runway configurations, for example, althouth not useful in dealing with alternative transportation modes.

d. *Affected Environment.* CEQ 1502.15 shall be followed, in particular the sentence in this section which directs that "The descriptions [of the affected environment] shall be no longer than is necessary to understand the effects of the alternatives." This section may highlight important background material, such as previous development and environmental actions which help to explain the present proposal. It may also include such items as bond actions, action by the community or citizen groups pertinent to the proposal, or any other unique factors associated with the project which do not properly belong in another section of the document. The Affected Environment section of the environmental assessment includes:

(1) A location map, vicinity map, and airport layout plan.

(2) Existing and planned land uses and zoning in the affected airport vicinity, including affected residential areas, public parks, wildlife and waterfowl refuges, wetlands, floodplains, farmlands, coastal zones, recreation areas, and historic facilities and archeological sites.

(3) Nearby schools and places of public assembly, hospials, shopping areas, and adjacent political jurisdictions affected by the proposed development.

(4) Population, industrial and commercial growth characteristics, and assumptions used to justify the project and determine secondary impacts only if these are relevant to the proposal.

(5) Any contemplated future actions, including facility installations and procedural actions, which have not been included in the Alternatives section and which should be described to show their relationship to the proposal and to show the sponsor's intentions regarding their environmental assessment and development.

(6) Other planned and developed activities in the affected area (e.g., highways and other transportation projects, housing development and relocation, etc.) which are interrelated to the proposal and/or which would produce cumulative impacts.

e. *Environmental Consequences—Specific Impact Categories.* A brief examination of each of the potential impact areas below shall be done and documented to determine whether it exceeds a threshold of significance. For areas requiring specific consultation, such an historic and cultural resources consultation with the State Historic Preservation Officer, this shall be done during the environmental assessment process. Each of the following impact categories shall be systematically examined for the proposed action and all reasonable alternatives, including the no action alternative.

(1) *Noise.* (a) No noise analysis is needed for proposals involving utility or basic transport type airports whose forecast operations in the period covered by the environmental assessment do not exceed 90,000 annual adjusted propeller operations or 900 annual adjusted jet operations ("adjusted" as defined in report No. FAA–AS–75–1, Developing Noise Exposure Contours for General Aviation Airports). These numbers of operations result in cumulative noise levels not exceeding 60 Day/Night Level (Ldn) more than 1,500 feet from the end of the runway or 65 Day/Night Level on the runway itself.

(b) A noise analysis is needed for proposals which individually or cumulatively involve airport location, runway location, major runway extension, or runway strengthening at any airport which is either:

1 Larger than basic transport,

2 Utility or basic transport at which forecast operations exceed those defined in (a) above, or

3 Highly controversial because of noise impacts (reference paragraph 24b).

(c) When required by (b), an initial noise analysis may be accomplished by using Report No. FAA–AS–75–1 to develop contours of equal noise exposure using either the Equivalent Noise Level or the Day/Night Level cumulative noise methodologies or by making a single point analysis using report No. EPA 550/9–77–450, Calculation of Day/Night Levels (Ldn) Resulting from Civil Aircraft Operations. Such analyses shall be sufficient to identify whether any existing or planned noise sensitive areas outside airport boundaries would be exposed to noise levels exceeding 65 Day/Night Level or the Equivalent Noise Level for present conditions and forecast conditions with and without the preferred alternative. Single point analysis where the flight paths cross airport boundaries may be sufficient for making this determination. The analysis shall consider the effects of other related actions, including installation of navigational aids and air traffic control procedures, reflecting as applicable the results of coordination with affected FAA operating services.

(d) If the initial noise analysis indicates that there are no existing or planned noise sensitive areas (as described in paragraph 85b) within the current or projected 65 Day/Night Level or Equivalent Noise Level equivalent *or* that the increase in the noise levels in such areas does not exceed three increments in either analysis over that created without the project (including consideration of any noise abatement procedures which exist), no further analysis is necessary and it may be assumed that there would be no significant noise impact as a result of the proposal. If these thresholds are exceeded, additional noise analysis is needed, as described in paragraph 85a.

(e) The text of the environmental assessment shall include a description of any mitigation measures existing or planned to minimize noise impacts. Even when the above thresholds are not exceeded, sufficient information shall be presented to permit lay and technical readers to relate the noise level data used to an understanding of its potential effects. The text and graphics shall present and support the conclusion that the noise impacts are not significant. The graphics shall include map(s) of the existing airport, proposed airport development, and the airport vicinity. Existing and planned land uses shall be illustrated, including the location of the nearest noise sensitive area(s). The illustrations shall be large enough and clear enough to be readily understood. When noise contours are developed, they shall be superimposed on a land use map(s) by prominent, legible lines and be clearly labeled.

(f) The above paragraphs refer to Equivalent Noise Level or Day/Night Level as the methodologies to use for noise analysis. An acceptable exception is use of the Community Noise Equivalent Level where required to meet state requirements as in California. The Noise Exposure Forecast methodology may also be used in environmental assessments begun prior to the effective date of the order.

(2) *Compatible Land Use.* (a) The compatibility of existing and planned land uses in the vicinity of an airport is usually associated with the extent of noise impacts related to that airport. In this context, if the noise analysis described above concludes that there is no significant impact, a similar conclusion usually may be drawn with respect to compatible land use. However, if the proposal would result in other impacts exceeding thresholds of significance which have land use ramifications (for example, distribution of communities, relocation, induced socioeconomic impacts, wetlands, floodplains, coastal zones, critical habitat of endangered or threatened species), the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category with any necessary cross-references to the Compatible Land Use section to avoid duplication.

(b) In any case, as a minimum the Land Use section of the environmental assessment shall include documentation to support the required sponsor's assurance under section 18(a)(4) of the Airport Act that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. The assurance must be related to existing and planned land uses.

(c) FAA officials shall contact the sponsor and representatives of affected communities to encourage the development of appropriate compatible land use controls early in the project planning stage. The environmental assessment shall document what is being done by the jurisdiction(s) with land use control authority, including an update on any prior assurance. It is recognized that not all airport sponsors have direct jurisdictional control. However, sponsors are public agencies with a voice in the affairs of the community in which the airport development is undertaken and should be required, as a minimum, to use their best effort to assure proper zoning or other land use controls near the airport. Depending on the sponsors' capability, "appropriate action" could range from extension of such influence to acquisition of land in fee. It is the FAA official's responsibility to determine that appropriate action constituting reasonable assurance, has been or will be taken.

(3) *Social Impacts.* (a) The principal social impacts to be considered are those associated with relocation or other community disruption which may be caused by the proposal. If the proposal will not involve the need to relocate any residence or business; alter surface transportation patterns; divide or disrupt established communities; disrupt orderly, planned development; or create an appreciable change in employment, then no specific analysis is neede and a summary statement to this effect will be sufficient in he environmental assessment.

(b) If relocation of residences is involved, the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 must be met. Sufficient information is needed in the environmental assessment to assure that the relocation can be managed. Such information may need to be obtained from secondary or community sources. If the assessment indicates any insufficiency in available housing or a high degree of controversy with respect to availability (reference paragraph 24d), the action shall be construed as having potential significant social impacts and will require additional analysis as indicated in paragraph 85c. For purposes of the environmental assessment, the following information shall be provided.

1 Estimate of the numbers of individuals and families as well as the characteristics of the households to be displaced (e.g., minorities, income levels, renter or owner, tenure, elderly, large families).

2 Impact on the neighborhodd and housing to which relocation is likely to take place.

3 Indication of ability to provide adequate relocation housing for the types of families to be displaced. Include a description of special relocation advisory services to be provided, if any, for the elderly, handicapped or illiterate regarding interpretation of benefits or other assistance available.

(c) If relocation of any business (including farm operations) is involved, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 requires that the owner be offered assistance in finding a location and reestablishing the business. Evidence to this effect shall be included in the environmental assessment. If the business relocation will create a severe economic hardship on the community, additional analysis is required in an environmental impact statement.

(d) If the proposal would result in alteration of surface transportation patterns or otherwise divide or disrupt established communities or orderly, planned development, such disruption shall not be considered significant unless there is a noticeable increase in congestion or access time to community facilities, recreation areas, or places of residence or business or other disruption which cannot be prevented or minimized. The environmental assessment shall document, to the extent applicable, measures taken to avoid significant disruption by such means as rerouting, street widening, or changes in land use patterns to minimize the effects of the project.

(e) The environmental assessment shall reflect the results of any consultation with local officials or with relocation or other social agencies or community groups regarding the social impacts of the proposed action.

(4) *Induced Socioeconomic Impacts.* For major airport development proposals there is the potential for induces or secondary impacts on surrounding communities. When such potential exists, the environmental assessments shall describe in general terms such factors as shifts in patterns of population movement and growth, public service demands, and changes in business and economic activity to the extent influenced by the airport development. Induced impacts will normally not be significant except where there are also significant impacts in other categories, especially noise, land use or direct social impacts. In such circumstances, a more thorough analysis of induced effects may be needed in an environmental impact statement.

(5) *Air Quality.* (a) Section 176(c) of the Clean Air Act Amendments of 1977 states in part that no Federal agency shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a State Implementation Plan after it has been approved or promulgated under section 110. The Act requires that, in developing the Plan, the states must designate all areas as Nonattainment for those pollutants which do not meet air quality standards and as Prevention of Significant Deterioration for those pollutants which do currently meet standards but are controlled to prevent further significant deterioration beyond acceptable limits. All State Implementation Plans must include a Transportation Control Plan approved by the metropolitan planning organization. It is FAA's responsibility to assure that Federal airport actions conform to state Plans for controlling areawide air pollution impacts.

(b) If the proposed Federal action involves airport location, development which would cause or allow an increase in aircraft operations, or major new construction or expansion of passenger handling or parking facilities with Federal funding, the applicable air quality analysis (or analysis) in paragraph (c) below shall be done for the environmental assessment. For other types of airport proposals, no air quality analysis is normally required for the environmental assessment and it may normally be assumed that there is no potential for significant air quality impacts. There may be exceptional actions, such as a proposed release of airport property for an industrial complex, which occur very infrequently and require FAA judgement on a case-by-case basis of how much and what kind of air quality information is needed.

(c) For the following three analyses, if *1* applies, then *2* and *3* do not. However, if *1* is not applicable, then both *2* and *3* must be examined since an airport may be located in an area which is designated Nonattainment for some pollutants and Prevention of Significant Deterioration for other pollutants.

1 If the airport location or proposed development is included in and consistent with an areawide Transportation Control Plan as determined by the state air quality board or designated air quality region, it may be assumed that there would be no significant air quality impact. A statement regarding consistency with the Transportation Control Plan and a supporting letter from the air quality board or region shall be included in the environmental assessment. No further analysis as indicated in *2* or *3* below is necessary. However, if there is doubt raised by the state air quality board, the designated air quality region, the EPA, or others regarding inclusion in the Transportation Control Plan or conformity with the principal State Implementation Plan, further analysis may be required. In such a situation, the airport sponsor shall contact the FAA for guidance.

2 If the airport location or proposed development is not in a Transportation Control Plan and is in an area designated as Nonattainment for a particular pollutant or pollutants, the Clean Air Act Amendments of 1977 require that, prior to development, the agency must demonstrate that there will be an improvement in air quality with regard to that pollutant or that the increased emissions of the pollutant are within the available growth increment of the approved State Implementation Plan. In order to demonstrate either of these conditions, an emission inventory of the Nonattainment pollutants for existing and forecast conditions shall be done for the environmental assessment. if this anaylsis shows that either condition would be met, it may be assumed that there would be no significant impact with regard to the Nonattainment pollutant or pollutants. If neither condition would be met, further detailed analysis in an environmental impact statement is required under paragraph 85e.

3 If the airport location or proposed development is in an area designated as Prevention of Significant Deterioration for some or all pollutants and is not in a Transportation Control Plan, the following instructions are to be followed. (If a Nonattaniment analysis in *2* above has been done for any pollutant, this pollutant need not be redone.)

a The proposal is subject to a Prevention of Significant Deterioration review if the airport facility now emits or is forecast to emit greater than 250 tons per year of any regulated pollutant. As of the date of this order, the only regulated pollutants for Prevention of Significant Deterioration review are sulfur dioxide (SO_2) and particulates (TSP). General utility and basic transport airports have been determined not to have the potential to emit these levels of pollutants and do not require individual analysis. Air carrier and general transport airports with less than 150,000 forecast total annual operations do not require individual analysis either, since they have been determined to emit less than 250 tons of either sulfur dioxide or particulates. For air carrier and general transport airports which are forecast to exceed 150,000 total annual operations, a calculation of the existing and forecast tons of regulated pollutants shall be included in the environmental assessment. If the amount of pollutants calculated is less than 250 tons per year, no further analysis is needed for Prevention of Significant Deterioration review applicability. If air carrier or general transport airports do exceed the 250 tons per year level, they qualify as major emitting facilities. In this case, the environmental assessment shall include an analysis of the additional incremental increases in regulated pollutants due to increased operations resulting from any proposed expansion and a comparison of the increases with the EPA standard of permitted increments. If the increases do not exceed the allowable incremental increases, it may be assumed that there would be no significant impact in terms of the Prevention of Significant Deterioration review. If the allowable incremental increases would be exceeded, further analysis may be done in an environmental impact statement under paragraph 85e.

b Although sulfur dioxide and particulates are the only pollutants under incremental regulations in Prevention of Significant Deterioration areas, airport actions must also be analyzed for comparison and compliance with the National Ambient Air Quality Standards for carbon monoxide, hydrocarbons, and nitrogen oxides. This analysis does not need to be done for general utility airports which are not forecast to exceed 150,000 annual operations or for basic transport airports which are not forecast to exceed 100,000 annual operations. These are the levels of operations for a typical general utility and basic transport mix of aircraft which would produce less than 1 percent of the National Ambient Air Quality Standards for the most critical pollutant (hydocarbons). It may be assumed that these types of airports with operations at and below these levels would have no significant impact on air quality in Prevention of Significant Deterioration areas. For general utility airports which exceed a forecast demand level of 150,000 annual operations, for basic transport airports which exceed a forecast demand level of 100,000 annual operations, and for all general transport and air carrier airports, the minimum National Ambient Air Quality Standards review for the environmental assessment shall involve a standard "box model" analysis for existing and forecast conditions with the development. If the box model analysis indicates an increase in pollutant levels resulting from the development of less than 1 percent of the National Ambient Air Quality Standards, no further analysis is needed and it may be assumed that there would be no significant air quality impact. If pollutant levels would increase by 1 percent or greater of the National Ambient Air Quality Standards, a more sophisticated model shall be utilized which must, as a minimum, include a complete inventory of all airport related point, line, and area sources. Air quality impacts will be considered significant if the area in which the development would take place is approaching the National Ambient Air Quality Standards. Further analysis may be necessary, as indicated in paragraph 85e, in an environmental impact statement.

(d) In any case, the environmental assessment shall include any measures

to be incorporated in the action to minimize adverse air quality effects, including control of air pollution during construction.

(e) The Airport Act requires that Airport Development Aid Program applications for projects involving airport location, runway location, or a major runway extension shall not be approved unless the governor of the state in which the project is located certifies that there is "reasonable assurance" that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards. To establish a "reasonable assurance," applicable standards and implementation requirements must have been established and an official designated who has authority to enforce compliance with the standards. When standards have not been approved but applicable standards have been promulgated by the EPA, EPA's approval shall be obtained. Lack of objection to air and water quality considerations as set forth in the environmental assessment or environmental impact statement may be construed as EPA approval. While the air and water quality certifications may be included in the environmental assessment or environmental impact statement whenever possible, their inclusion is not a prerequisite to approval of a finding of no significant impact or final environmental impact statement if the document includes evidence from the governor or appropriate state official indicating a reasonable expectation that the certification will be given. The state's certification or the EPA's approval must be received, however, before the project can be approved by the FAA.

(6) *Water Quality.* (a) The Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (commonly referred to as the Clean Water Act), provides the authority to establish water quality standards, control discharges into surface and subsurface waters, develop waste treatment management plans and practices, and issue permits for discharges (section 402) and for dredged or fill material (section 404). The environmental assessment shall include sufficient description of design, mitigation measures, and construction controls applicable to the proposal to demonstrate that state water quality standards and any Federal, state, and local permit requirements can be met. Such factors as storm and sanitary sewer design, requirements for additional water supplies or waste treatment capacity, erosion controls to prevent siltation, provisions for containing fuel spills and waste water from aircraft washing, designs to preserve existing drainage or to minimize dredge and fill, and location with regard to an aquifer or sensitive ecological area such as a wetlands area shall be considered to the extent applicable to the individual proposal.

(b) Early consultation with local, state, and Federal agencies charged with implementation of water quality regulations and issuance of permits will normally identify any deficiencies in the proposal with regard to water quality or any additional information necessary to make judgments on the significance of impacts. The environmental assessment shall reflect the results of consultation with regulating and permitting agencies and with agencies that must review permit applications, such as the U.S. Fish and Wildlife Service which may have specific concerns. Such consultation should be started at an early stage of the environmental assessment and may be completed during the A–95 review.

1 A water quality certification is required under the Airport Act for approval of an Airport Development Aid Program application for a project involving airport location, a major runway extension, or a runway location. The requirement for information in the environmental assessment concerning this certification is the same as for an air quality certification as described in paragraph 47e(5)(e).

2 Consultation with the EPA regional office shall be undertaken if there is the potential for contamination of an aquifer designated by the EPA as a sole or principal drinking water resource for the area pursuant to section 1424(e) of the Safe Water Drinking Act, as amended.

3 The Fish and Wildlife Coordination Act applies to any proposal which would affect water resources (i.e., wetlands; groundwater; impoundment, diversion, deepening, controlling, modifying, polluting, dredging or filling of any stream or other body of water). For this situation instructions in paragraph 47e(9)(c) apply.

4 A National Pollutant Discharge Elimination System permit under section 402 of the Clean Water Act is required for discharges into navigable waters, a section 404 permit is required for dredged or fill material in navigable water, and a section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters. "Navigable waters" have been very broadly defined in EPA regulations (reference 40 C.F.R. Part 230, Appendix A) and encompass most bodies of water (including wetlands) and their tributaries. EPA is charged with the overall responsibility for section 402 permits, and the U.S. Army Corps of Engineers for section 404 and section 10 permits. States, under specified conditions, have the authority to issue these permits. Other state and local permits pertaining to water quality may also be required. Consultation with appropriate officials is necessary to determine which permits apply, what information is needed to obtain permits, and whether a permitting agency anticipates a problem given the nature, location, and possible impacts of the proposal.

(c) For most airport actions, significant impacts on water quality can be avoided by design considerations, controls during construction, and other mitigation measures. If the environmental assessment the appropriate consultation as described in paragraph (b) above, and the A–95 coordination demonstrate that water quality standards can be met, that no special water related problem exists, and that no anticipated permit difficulty is indicated, it may be assumed that there would be no significant impact on water quality. The environmental assessment shall include documentation from regulating and permitting agencies and list required permits. No further analysis is necessary.

(d) If the environmental assessment and early consultation show the potential for exceeding water quality standards, identify water quality problems which cannot be avoided or satisfactorily mitigated, or indicate difficulties in obtaining required permits, an environmental impact statement may be required. Further analysis is described in paragraph 85f.

(7) *Department of Transportation Act, Section 4(f).* (a) section 4(f) provides that the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge or national, state, or local significance, or any land from a historic site of national, state, or local significance as determined by the officials having jurisdiction thereof unless there is no feasible and prudent alternative to the use of such land and such program includes all possible planning to minimize harm.

1 Any part of a publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park by the Federal, state,

or local official having jurisdiction thereof. Any such statement of insignificance is subject to review by the FAA.

2 Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and shall be considered subject to section 4(f) unless the controlling agency specifically determines that section 4(f) is not applicable.

3 Where property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, a section 4(f) determination would not ordinarily be required.

4 Where the use of a property is changed by a state or local agency from a section 4(f) type use to a transportation use in anticipation of a request for FAA approval, section 4(f) shall be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of section 4(f).

(b) If the action involves the taking or other use of any section 4(f) land as described in (a), the initial assessment shall determine if the requirements of section 4(f) are applicable. When there is an actual physical taking of section 4(f) land in conjunction with an airport proposal, there is no latitude for judgment regarding section 4(f) applicability. When there is no physical taking but there is the possibility of use of or adverse impacts to section 4(f) land, the FAA must determine if the activity associated with the proposal conflicts with or is compatible with the normal activity associated with this land. The proposed action is compatible if it would not affect the normal activity or aesthetic value of a public park, recreation area, refuge, or historic site. When so construed, the action would not constitute use and would not, therefore, invoke section 4(f) of the DOT Act.

(c) If it is determined that section 4(f) is applicable and there are no feasible or prudent alternatives which would avoid such use under the criteria indicated in paragraph 83d, the effect on the 4(f) land shall be described in detail. The description of the land shall include size activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, or other factors necessary to determine the effects of the action and measures needed to minimize harm. Such measures may include replacement of land facilities and design measures such as planting or screening to mitigate any adverse effects. Replacement satisfactory to the Secretary of the Interior is specifically required for recreation lands aided by the DOI's Land and Water Conservation Fund and for certain other lands falling under the jurisdiction of the DOI. The environmental assessment shall include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over such land regarding actions proposed to minimize harm.

(d) If Federal grant money was used to acquire the land involved (i.e., open space under HUD, various conservation programs under DOI), the environmental assessment shall include evidence or reference to appropriate communication with the grantor agency.

(e) Whether or not Federal agency lands are involved, the documentation shall reflect consultation with the DOI and, as pertinent, HUD or USDA.

(f) The above instructions apply regardless of the extent of impact and shall be reflected in the environmental assessment. When section 4(f) applies and agencies which have jurisdiction agree that the effects of the action will be satisfactorily mitigated (e.g., by replacement "in kind" of a park or portion thereof), the action may be considered not to have significant section 4(f) impacts and no further analysis is needed. No objection by affected agencies may be construed as agreement for this purpose. If an agency which has jurisdiction advises that mitigation measures will not avoid significant effects, additional in-depth study and consultation may be necessary for inclusion in an environmental impact statement as described in paragraph 85g.

(8) *Historic, Architectural, Archeological, and Cultural Resources.* (a) Two basic laws apply to this category of impact. One is the National Historic Preservation Act of 1966, as amended, which established the Advisory Council on Historic Preservation to advise the President and the Congress on historic preservation matters, to recommend measures to coordinate Federal historic preservation activities, and to comment on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places. The Advisory Council's most recent "Procedures for the Protection of Historic and Cultural Properties" (36 C.F.R. Part 800) were published in the Federal Register on January 30, 1979. The second law is the Archeological and Historic Preservation Act of 1974 which provides for the survey, recovery, and preservation of significant scientific, prehistorical, historical, archeological, or paleontological data when such data may be destroyed or irreparably lost due to a Federal, federally licensed, or federally funded project. The DOI Heritage Conservation and Recreation Service's "Statement of Program Approach" was published in the Federal Register on March 26, 1979, (40 F.R. 18117) to advise on the manner in which this latter law will be implemented. Thresholds concerning both of these laws must be examined in the environmental assessment. Subparagraph (b) below specifies requirements under the National Historic Preservation Act of 1966, as amended, and subparagraph (c) specifies requirements under the Archeological and Historic Preservation Act of 1974.

(b) The following are requirements under the National Historic Preservation Act of 1966, as amended.

1 An initial review shall be made to determine if any properties in or eligible for inclusion in the National Register of Historic Places are within the area of the proposed action's potential environmental impact. The "area of the proposed action's potential environmental impact" is that geographic area within which direct and indirect impacts generated by the proposed action could reasonably be expected to occur and thus cause a change in the historic, architectural, archeological, or cultural qualities possessed by the property. To aid in identifying properties, the Heritage Conservation and Recreation Service publishes the complete National Register listing each February in the Federal Register with updates each month. In addition, the State Historic Preservation Officer must be consulted for advice. State Historic Preservation Officer coordination may be accomplished through the A–95 process. Assistance may also be obtained from local officials, historical societies, museums, or academic institutions having jurisdiction or expertise with regard to such properties. If the State Historic Preservation Officer recommends the need for a professional cultural resource survey of the environmental impact area, the airport sponsor shall contact the FAA for a

determination on whether such a survey is required for the environmental assessment. The FAA, in making this determination, should follow the recommendations of the State Historic Preservation Officer if the Officer provides good reason for believing that previously unidentified eligible historic, architectural, archeological, or cultural properties are within the area of the proposed action's environmental impact. The National Register criteria shall be applied to all such identified properties. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register. If no properties in or eligible for inclusion in the National Register have been identified within the area of the proposed action's environmental impact, this information shall be documented in the environmental assessment with the letter from the State Historic Preservation Officer and a record of any other analysis or survey undertaken. No further analysis is needed.

2 If any property in or eligible for inclusion in the National Register has been identified within the area of the proposed action's environmental impact, the Advisory Council on Historic Preservation's Procedures for the Protection of Historic and Cultural Properties shall be used to determine if the proposed action will have any effect on the property. Initially the Criteria of Effect (36 C.F.R. Part 800.3(a)) shall be applied in consultation with the State Historic Preservation Officer. If this criteria indicates and the Officer agrees that the proposal would not directly or indirectly affect those historic, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register criteria, a Determination of No Effect shall be documented in the environmental assessment with the relevant State Historic Preservation Officer letter. No further analysis is needed. If the airport sponsor and the State Historic Preservation Officer disagree on a proposed Determination of No Effect, the matter shall be referred to the FAA for resolution.

3 If the application of the criteria in 36 C.F.R. Part 800.3(a) indicates an effect on properties, the Criteria of Adverse Effect (36 CFR 800.3(b)) shall be applied. If it is determined and the State Historic Preservation Officer agrees that there would be no adverse effect, supporting documentation for a Determination of No Adverse Effect as specified in (36 C.F.R. 800.13(a) together with the written views of the State Historic Preservation Officer shall be forwarded to the Advisory Council on Historic Preservation for review by the Executive Director. Unless an objection is noted by the Executive Director within 30 days of receipt of adequate documentation, such documentation shall be included in the environmental assessment and no further analysis is needed. Disagreement on the Determination of No Adverse Effect between the sponsor and the State Historic Preservation Officer or the Advisory Council shall be referred to the FAA for resolution as provided for in 36 C.F.R. 800.6(a)(2).

4 If an adverse effect on properties is indicated, a Determination of Adverse Effect shall be included in the environmental assessment with supporting documentation. A preliminary case report shall be prepared as specified in 36 C.F.R. 800.13(b), either as part of the environmental assessment or as a separate document, and submitted to the FAA for the Advisory Council's consultation process. It cannot be assumed that impacts are insignificant on properties in or eligible for inclusion in the National Register of Historic Places. Further consultation and analysis under the guidance of the FAA will be necessary as described in paragraph 85h.

(c) Following are the requirements under the Archeological and Historic Preservation Act of 1974.

1 If no information is made available through the National Register of Historic Places, the State Historic Preservation Officer, the A–95 review, or other persons or organizations with expertise that there is reason to believe that significant scientific, prehistoric, historic, archeological, or paleontological resources will be lost or destroyed by the proposed action, no further analysis under this Act is needed for the environmental assessment. It may be assumed that there would be no impact on such resources.

2 If the above consultation indicates the need for a professional resource survey of the area to be impacted the airport sponsor shall contact the FAA for advice as described under subparagraph (b)*1* above. If a survey is performed and indicates no significant resources within the area, the results of the survey shall be documented in the environmental assessment. The survey itself shall be appended to the environmental assessment, or referenced if it is voluminous. No further analysis is necessary to show that the impact is not significant.

3 If consultation and/or a survey are inconclusive with regard to the location of resources or the significance of resources, the airport sponsor may include a commitment in the environmental assessment to halt construction if resources are uncovered in order for a qualified professional to evaluate the importance of the resources and for recovery activity to occur. Such a commitment may enable the environmental document to be approved and the action to proceed without more extensive preliminary investigation. It is a matter of FAA judgment on a case-by-case basis as to whether such an approach is reasonable. If the FAA agrees, no further analysis is necessary and it may be assumed for purposes of the environmental assessment that the impact is not significant.

4 If consultation and/or a survey identify significant resources within the area of the proposed action's potential environmental impact, the National Register criteria shall be applied and the steps outlined under subparagraphs (b)*1* through *4* followed pursuant to the provisions of the National Historic Preservation Act of 1966, as amended. If a Determination of No Effect or No Adverse Effect can be made per subparagraph (b)*2* or (b)*3*, respectively, it may be assumed that the impact is not significant. The environmental assessment shall document the appropriate determination. No further analysis is necessary.

5 If an adverse effect on significant resources is indicated, the sponsor shall consider project modifications that will avoid the loss or destruction of the resources and thereby not necessitate salvage. Resource salvage is generally less preferable than preservation in situ. If a commitment by the sponsor to preservation in situ reverses an adverse effect determination, the environmental assessment shall include the commitment and the supporting documentation of no adverse effect. No further analysis is necessary.

6 If a determination of adverse effect cannot be avoided, the instructions in subparagraph (b) *4* apply and further consultation and analysis under the guidance of the FAA will be necessary as described in paragraph 85h.

(d) If the proposal involves the taking or use of any publicly or privately owned land from a historic or archeological site of national, state, or local significance which is included in or eligible for inclusion in the National Register of Historic Places, section 4(f) of the DOT Act also applies. The section 4(f) instructions under paragraph 47e(7) must be followed.

(9) *Biotic Communities (including both flora and fauna).* (a) If the proposal would take or impact a publicly owned wildlife or waterfowl refuge of local,

state, or national significance, the instructions in paragraph 47e(7) are to be followed to prepare the appropriate documentation required by section 4(f) of the DOT Act.

(b) Consideration of endangered and threatened species is rquired for all proposals under the Endangered Species Act Amendments of 1978. Instructions in paragraph 47e(10) relate specifically to this Act.

(c) If the proposal would affect water resources (i.e., wetlands; groundwater; impoundment, diversion, deepening, controlling, modifying, polluting, dredging, or filling of any stream or other body of water), the Fish and Wildlife Coordination Act applies. Consultation is to be initiated with the U.S. Fish and Wildlife Service and with the state agency having administration over wildlife resources. Letters are to be obtained from the Fish and Wildlife Service and the state agency on the wildlife aspects of the proposal for the purposes of determining the possible damage to wildlife resources and of determining means and measures that should be adopted to prevent the loss of or damage to wildlife resources as well as to provide concurrently for the development and improvement of such resources. If the letters from the Fish and Wildlife Service and the state agency indicate substantial damage to wildlife attributable to the proposal which will not be mitigated to a minimal level, the proposal is considered to be one with potential significant impacts. Further evaluation shall be performed under FAA direction as described in paragraph 85i. If the letters from the Fish and Wildlife Service and the state agency indicate only minimal impacts, it may be assumed that there would be no significant impact on biotic communities. The environmental assessment shall include the letters from the Fish and Wildlife Service and the state agency and shall also include such justifiable means and measures to mitigate wildlife impacts as should be adopted to obtain maximum overall project benefits. No further analysis as described below is needed.

(d) If the proposal would not affect water resources as described in subparagraph (c) above, the Fish and Wildlife Coordination Act does not apply. In this case, a series of thresholds are to be examined to determine if there is the potential for significant impact on biotic communicaties. The four subparagraphs below should be reviewed in the order given to determine which one applies to the proposal; e.g., if subparagraph *1* applies, the remainder do not and no further analysis is needed.

1 If the proposal would impact only man dominated aras such as previously disturbed airport property, populated areas, or farmland, it may be assumed that there would be no significant impact on biotic communities.

2 If the proposal would impact other than man dominated areas but the impacts would primarily be transient rather than permanent, such as dislocation or other impacts due to construction activities, it may be assumed that there would be no significant impact on biotic communities. The environmental assessment shall document the transient nature of the impacts and any mitigation measures. Mitigation measures may include:

a Erosion controls to protect adjacent biotic areas and aquatic communities.

b Phasing of construction to avoid breeding or nesting periods and to promote escape routes for mobile species.

c Landscape restoration to reconstitute existing habitat or create new habitat.

3 If the proposal would cause only a minor permanent alteration of existing habitat, it may be assumed that there would be no significant impact on biotic communities. "Minor alteration" generally refers to the removal of a few acres of habitat which represent a small percentage of the area's inventory or which support a limited variety or number of common wildlife species. "Minor alteration" is not applicable if the action involves removal of relatively small areas which are sensitive tracts occupying a strategic position in the vicinity or which supports rare (meaning not common) species or which constitute a large percentage of the remaining habitat of a particular kind. The environmental assessment shall not merely cite "Minor alteration" but shall document the basis for the assumption of no significant impact and shall also document any mitigation measures.

4 If the proposal would involve the removal of a sizeable amount of habitat, of habitat which supports rare species, or of a small, sensitive tract but the accompanying loss of plant communities and displacement of wildlife do not result in a significant long term loss to the area, it may be assumed that there would be no significant impact on biotic communities. In this case consider that, although displaced wildlife may move to adjacent land araas, a long term loss will accrue by virte of reduction of the wildlife carrying capacity of the overall area. When wildlife habitat is removed, the possibility that the remaining habitat is insufficient in size and quality to continue to support all resident species must be considered. The input from the A–95 coordination and other informal coordination as necessary is to be used to support the assumption that impacts are not significant. The environmental assessment shall document the impacts and mitigation measures and shall include supporting letters. Mitigation measures may include:

a Design adjustments to minimize impat on sensitive areas or species.

b Purchase of contiguous habitat as a preserve for dislocated wildlife or as a buffer zone.

(e) If the evaluation, using the thresholds in subparagraph (d), does not lead to the assumption that there would be no significant impact on biotic communities, the proposal is considered to be one with potential significant impacts. Further evaluation shall be performed under FAA direction as described in paragraph 85i.

(10) *Endangered and Threatened Species of Flora and Fauna.* (a) Section 7 of the Endangered Species Act Amendments of 1978 requires each Federal agency to insure that "any action authorized, funded, or carried out by such agency . . . does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee. . . ."

(b) As required by section 7(c) of the Endangered Species Act Amendments, information must be requested from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, whichever has jurisdiction, on whether any species which is listed or proposed to be listed may be present in the area of the proposed action. If the reply from the Fish and Wildlife Service or National Marine Fisheries Service indicates that no such species are prsent, it may be assumed that there would be no significant impact on endangered or threatened species. The environmental assessment shall include the letter from the Fish and Wildlife Service or National Marine Fisheries Service. No further analysis is necessary.

(c) If, however, the reply from the Fish and Wildlife Service or National Marine Fisheries Service indicates that endangered or threatened species may be present in the area of the proposed action, a biological assessment shall be

prepared to identify whether the species or critical habitat are likely to be affected by the action and what those effects would be. If this biological assessment indicates no effects on the species or critical habitat, it may be assumed that there would be no significant impact on endangered or threatened species. The environmental assessment shall include the biological assessment. No further analysis is necessary. The FAA shall forward the biological assessment to the Fish and Wildlife Service or the National Marine Fisheries Service for their records.

(d) If the biological assessment indicates an effect on endangered or threatened species or on critical habitat, the proposal is considered to be one with potential significant impact. Consultation under section 7(a) of the Endangered Species Act Amendments of 1978 and further evaluation shall be performed under FAA direction as described in paragraph 85j.

(11) *Wetlands.* (a) Wetlands are defined in Executive Order 11990, Protection of Wetlands, as "those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegatative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction." Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." Wetlands also include estuarine areas, tidal overflows, and shallow lakes and ponds with emergent vegetation. Furthermore, the wetlands ecosystem includes those areas which affect or are affected by the wetland itself; e.g., adjacent uplands or regions upstream and downstream. Areas covered with water for such a short time that there is no effect on moist soil vegetation are not included within the definition of wetlands nor are the permanent waters of streams, reservoirs, and deep lakes.

(b) Wetlands are valuable ecological systems. They can serve to accumulate, convert, store, and supply basic nutrients; provide habitat for many kinds of wildlife; serve to regulate the flow of runoff waters and cleanse them of pollutants; provide a buffer against storm waters and help reduce flooding; serve as water recharge areas; and provide a scientific and recreational resource. The importance of wetlands to the Nation was reemphasized in Executive Order 11990, issued May 24, 1977. This executive order directs Federal agencies to "avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. . . ." The executive order further states that Federal agencies "shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors."

(c) A proposal is considered to affect wetlands if it would involve development in a wetlands area; involve dredging, filling, draining, channelizing, diking, impounding, or otherwise directly impact a wetlands area; involve disturbing the water table of an area in which a wetland lies; or indirectly affect a wetland by impacting regions upstream or downstream or inducing secondary development. If there is uncertainty on whether an area is a wetland, the U.S. Fish and Wildlife Service or the local or State natural resource agency shall be contacted for further information.

(d) If the proposal does not affect a wetlands area, a sentence to this effect in the environmental assessment is sufficient. No further analysis is necessary.

(e) If the proposal would affect a wetlands area and there is a practicable alternative which solves the problem and avoids the wetlands impact, this alternative should become the proposed action. The term "practicable" means feasible. Whether another alternative is practicable depends on its feasibility in terms of safety, meeting transportation objectives, design, engineering, environment, economics, and any other applicable factors. Some additional cost alone does not necessarily make an alternative impracticable since such cost may be recognized as necessary and justified to meet national wetlands policy objectives. If a practicable alternative is put forward as the new proposed action, no further wetlands analysis is necessary. The environmental assessment should document that the initial proposed action was eliminated from further study because of wetland impacts.

(f) If the proposal would affect a wetland and there is no practicable alternative, the following instructions apply:

1 The environmental assessment shall include information on the location, types, and extent of wetland areas that might be affected by the proposed action. This information may be obtained from the Fish and Wildlife Service or State or local natural resource agencies.

2 Evaluations of other categories of impacts as described under paragraph 47e are to be used to determine whether impacts on wetlands appear to be significant. Consideration shall be given to impacts on water quality, including effects on water supply and recharge capability, interference with surface and subsurface water courses, siltation and sedimentation, biotic community disruption, flood and storm hazards, development of secondary (induced) activities or services, and construction. The wetlands discussion in the environmental assessment may simply summarize and reference applicable discussions under other impact categories. Any impact on wetlands shall incorporate in its evaluation all practicable measures to minimize harm which included, but are not limited to:

a Modification of the design, construction, or operation of the facility, incuding collection of pavement surface runoff to prevent direct discharge into sensitive areas.

b Waste treatment.

c Development of compatible land uses.

d Special construction controls.

3 Early review of proposed actions shall be provided for agencies with special interest in wetlands. Such agencies include state and local natural resource and wildlife agencies, the Fish and Wildlife Service, The National Marine Fisheries Service, the Corps of Engineers, and EPA. This review may be combined as much as possible with the A–95 review. Those agencies which have permitting actions described below shall be asked to advise if they foresee any difficulty issuing such permits based on the initial assessment that the proposal has no practicable alternative which would avoid the wetland and that all possible mitigation measures have been taken. Such advice should include recommendations regarding additional measures which could be taken to enable their subsequent favorable action on such permits. Letters from these agencies shall be incorporated into the environmental assessment and their opinions used to determine significance of impacts and to pinpoint potential problems in proceeding

towards approval of the environmental document.

4 Specific consultation is required under the Fish and Wildlife Coordination Act with the U.S. Fish and Wildlife Service and the state agency having administration over the wildlife resources. For this analysis, documentation, and significance threshold, refer to paragraph 47e(9)(c).

5 The environmental assessment shall identify any permits that are required. Permit requirements for proposals affecting wetlands may include those identified below, which are further explained in paragraph 47e(6)(b).

a Section 402. Airport runoff into the surrounding environment may be considered to be a discharge subject to a Federal or state National Pollutant Discharge Elimination System permit pursuant to the Clean Water Act when the surrounding environment is a wetlands area.

b Section 404. Most wetlands are considered to be "navigable waters" for the purposes of the Clean Water Act.

c Section 10 of the Rivers and Harbors Act of 1899. Under this Act, wetlands may also fall under the permit requirements of the Corps of Engineers due to obstruction or alteration of navigable waters.

d State Permit. The proposal may be required to comply with a state wetlands permit system.

6 An opportunity shall be provided for early public review of any proposals involving wetlands. This may be accomplished through early coordination by the sponsor per paragraph 45, use of the A–95 dissemination per paragraph 48e, or the opportunity to review the environmental assessment prior to a public hearing when one is held for proposed actions as described in paragraph 49.

7 A wetlands which is in or adjacent to a coastal area may be subject to a state coastal zone management program. In this situation, the instructions in paragraph 47e(13) shall also be followed.

8 Section 4(f) of the DOT Act may apply if wetlands are publicly owned lands as described in paragraph 47e(7). Wetlands subject to a publicly owned protective easement for provision of food and nesting to migratory waterfowl are considered to be publicly owned land of a wildlife and waterfowl refuge under section 4(f). The instructions in paragraph 47e(7) are to be followed for section 4(f) situations.

9 If the above analyses indicate any significant impacts on wetlands, the instructions under paragraph 85k are to be followed.

(12) *Floodplains.* (a) Floodplains are defined in Executive Order 11988, Floodplain Management, as "the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year;" i.e., the area that would be inundated by a 100-year flood.

(b) Executive Order 11988 directs Federal agencies to "take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. * * *" DOT Order 5650.2, Floodplain Management and Protection, contains DOT's policies and procedures for implementing the executive order. The DOT order further defines the natural and beneficial values served by floodplains as including, but not limited to "natural moderation of floods, water quality maintenance, groundwater recharge, fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, and forestry." The executive order and the DOT order establish a policy to avoid taking an action within a 100-year floodplain where practicable. Every effort must be made to minimize the potential risks to human safety and property damage and the adverse impacts on natural and beneficial floodplain values.

(c) If the proposed action and reasonable alternatives are not within the limits of a base floodplain (i.e., 100-year flood area) and would not indirectly support secondary development within a base floodplain nor otherwise significantly impact a base floodplain, it may be assumed that there are no floodplain impacts. No further analysis is necessary.

1 To determine the limits of base floodplains, the Federal Insurance Administration (FIA) maps are the primary reference. A Flood Insurance Rate Map or Flood Insurance Study Report shall be consulted first. If neither of these maps is available, a Flood Hazard Boundary Map may be used to determine if the proposed action and alternatives are clearly out of the base floodplain. If the proposed action or any alternative appears to be near or inside the approximate boundaries of the Flood Hazard Boundary Map, more detailed boundary information must either be obtained or developed using the best available method meeting acceptable professional engineering standards. The delineation of floodplain limits shall take proper account of previous alterations to the floodplain by flood retention works or other elements of the built environment.

2 To determine whether other impacts are of concern to a base floodplain even though the proposed action is outside the floodplain, the evaluations of other categories of impacts as described in paragraph 47e are to be used with particular attention to potential effects on natural and beneficial floodplain values of water pollution, increased runoff from impermeable surfaces, alteration of hydrologic patterns, induced secondary development, and construction impacts. Consideration of impacts shall include proposed methods to minimize harm and to restore and preserve natural and beneficial floodplain values affected. In most cases, conceptual design as opposed to detailed engineering will be sufficient to help establish the adequacy of mitigation measures. Mitigation measures include:

a Construction controls to minimize erosion and sedimentation.

b Design of the facility to allow adequate flow circulation and preserve free, natural drainage.

c Use of pervious surfaces where practicable.

d Control of runoff.

e Waste and spoils disposal so as not to contaminate ground and surface water.

f Control of use of pesticides, herbicides, and fertilizer.

g Maintenance of vegetative buffers to reduce sedimentation and delivery of chemical pollutants to the water body.

h Land use controls (Executive Order 11988 directs Federal agencies to take floodplain management into account in evaluating land use plans and to require land and water resource use appropriate to the degree of hazard involved).

(d) If the analyses performed in accordance with the preceding paragraph indicate significant impacts on a base floodplain, the environmental assessment shall so state. Further analysis appropriate for an environmental impact statement is contained in paragraph 85l.

(e) If the proposed action and reasonable alternatives are within the limits of a base floodplain, this is considered by DOT Order 5650.2 to be a floodplain encroachment. If the proposed action includes relocation housing built or moved to a new site within a base floodplain, this also constitutes encroachment. It is not

encroachment if the only step being taken in the floodplain is the relocation of persons into existing housing units. In this latter situation, potential occupants shall be advised if the relocation housing is located in a base floodplain and be offered alternative comparable housing at their option.

(f) It is DOT policy, in accordance with Executive Order 11988, to avoid where practicable encroachments in base floodplains by DOT actions. If there is a practicable alternative which solves the problem and avoids the encroachment, this alternative shall become the proposed action. The term "practicable" is defined under Wetlands Impact in paragraph 47e(11)(e). If a practicable alternative is put forward as the new proposed action, no further analysis is necessary if the new proposed alternative does not otherwise significantly impact the base floodplain. The environmental assessment shall document that the initial proposed action was eliminated from further study because of base floodplain encroachment.

(g) If the proposed action and reasonable alternatives would encroach within the limits of a base floodplain, the following instructions apply:

1 The environmental assessment shall indicate briefly why the action is proposed to be located in a floodplain and why there are not considered to be any practicable alternatives outside the base floodplain.

2 The environmental assessment shall include the map information, analyses, and proposed mitigation measures described under subparagraph (c) above and shall also consider any risk to, or resulting from, the airport action in the base floodplain, including long term loss of available flood storage volume. In addition to measures listed under subparagraph (c), mitigation measures for base floodplain encroachments may include:

a Commitments to special flood related design criteria.

b Elevation of facilities above base flood level.

c Location of nonconforming structures and facilities out of the floodplain.

d *Minimizing fill in floodplains.*

3 The environmental assessment shall indicate if the encroachment would result in one or more of the construction or flood related impacts listed below. If so, the encroachment is considered by DOT Order 5650.2 to be a significant encroachment. It is not contemplated that detailed design would be necessary in order to determine whether there is a significant encroachment. (A significant encroachment will require a Federal finding as part of any favorable decision on the action that there is no practicable alternative and that the action conforms to applicable state and/or local floodplain protection standards.) A significant encroachment involves:

a A considerable probability of loss of human life.

b Likely future damage associated with the encroachment that could be substantial in cost or extent, including interruption of service on or loss of a vital transportation facility.

c A notable adverse impact on natural and beneficial floodplain values.

4 The environmental assessment shall indicate if the proposed action is in a special flood hazard area designated by the FIA or proposed to be so designated. Special flood hazard areas are shown as zones A or V on Flood Hazard Boundary Maps. Under the Flood Disaster Protection Act of 1973, Federal agencies are prohibited from providing financial assistance for acquisition or construction of buildings in areas which have been designated by the FIA as special flood hazard areas for a least one year and which are in communites that are not participating in the national flood insurance program.

5 The environmental assessment shall identify any state and local floodplain regulations and standards that must be adhered to, indicate whether the proposed action will conform, and name the state and local agencies having jurisdiction.

6 An opportunity shall be provided for early public review of base floodplain encroachments. This may be accomplished through existing public involvement procedures as indicated in paragraphs 45, 48e, and 49. Any public hearing presentations shall include identification of encroachments. If one or more of the alternatives under consideration include significant floodplain encroachments, any public notices, notices offering the opportunity for a public hearing, public hearing notices, and notices of the availability of environmental assessments shall make reference to that fact.

(h) If no significant encroachment within a base floodplain is involved as defined in subparagraph (g)*3* above, it may be assumed that there would be no significant floodplain impact. No further analysis and no special floodplains findings are necessary.

(i) If a significant encroachment is involved which could result in either loss of life or substantial future damage or both but would not result in notable adverse impacts on natural and beneficial floodplain values, these circumstances do not by themselves require the preparation of an environmental impact statement. CEQ 1508.14 states that " * * * economic or social effects are not intended by themselves to require preparation of an environmental impact statement." While further consideration on the floodplains aspects of the proposed action would be prudent on the part of the sponsor and the FAA before proceeding, a finding of no significant impact is the appropriate action choice in this circumstance assuming there are no other significant environmental impacts associated with the action. The findings delineated in paragraph 94b(6) would be required for the project decision.

(j) If a significant encroachment is involved which would result in notable adverse impacts on natural and beneficial floodplain values, this would require the preparation of an environmental impact statement and further analysis as described in paragraph 851.

(13) *Coastal Zone Management Program.* (a) Detailed procedures for determining Federal consistency with approved coastal zone management programs are contained in the National Oceanic and Atmospheric Administration (NOAA) Regulations (15 C.F.R. Part 930). The sections most relevant to airport actions are subpart D, Consistency for Activities Requiring a Federal License or Permit, and subpart F, Consistency for Federal Assistance to State and Local Governments. If there is no approved state program, the instructions below do not apply. However, the environmental assessment shall in any case consider impacts on coastal areas. This may be done through analyses performed under other impact categories (e.g., water quality, biotic communities, construction impacts) as appropriate, using the thresholds established under these respective categories. If thresholds of significance are exceeded, a more detailed coastal area and/or marine analysis may be necessary in an environmental impact statement. Coastal areas may also be designated as wetlands and require the special treatment described in paragraph 47e(11).

(b) The principal means used to determine if a proposed Federal action is consistent with an approved coastal zone management program is through the A–95 clearinghouse review process as described in paragraph 48. To the extent possible, the information provided shall include a detailed description of the proposed action and any associated facilities sufficient to permit an assessment of their probable

coastal zone effects and consistency with the provisions of the approved coastal zone management program. If, through the A–95 process, the state coastal zone management agency does not object to the proposed action, no further action is necessary. The environmental assessment shall document the result of such coordination.

(c) Approval of airport layout plans could by definition in the NOAA Regulations be a Federal permitting action subject to subpart D. Unless this activity has specifically been identified in a given state's coastal zone management program or unless a state coastal zone management agency specifically advises the sponsor and FAA through A–95 or review of an environmental impact statement that an airport layout plan approval action would significantly affect a coastal zone, subpart D of the NOAA regulations will not apply and no further action is needed. If subpart D applies, the applicant must provide more specific information including a consistency certificate, and the state agency has up to six months within which to register objection.

(d) If the state coastal zone management agency objects to the proposed action on the basis of failure to provide sufficient information, it must describe the nature of the information needed to determine consistency with the coastal zone management program. Otherwise, any objection must identify how the proposed action is inconsistent with specific elements of the management program and alternative measures which, if adopted, would permit consistency. The objection shall also provide information on the right to appeal to the Secretary of Commerce pursuant to subpart H of the NOAA Regulations. Such appeal must be made within 30 days of notice of the objection. When an objection has been raised which cannot be satisfied by providing additional information or otherwise be resolved through informal discussions to avoid the need for an appeal as provided in subpart H, the sponsor may file a notice of appeal as soon as possible and notify the FAA accordingly. The action shall not be approved unless such an objection is successfully appealed.

(e) As a result of an appeal, the Secretary of Commerce may find that the action is "consistent with the objectives and purposes of the [Coastal Zone Management] Act" and permissible even though it is inconsistent with a state's management program. Such finding may be made on the basis that the action:

1 Furthers one or more of the competing national objectives or purposes defined in the Act;

2 Will not cause adverse impacts on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest;

3 Will not violate the requirements of the Clean Air Act or Clean Water Act; and

4 No reasonable alternative exists which permits the action to be consistent with the management program.

Such a finding by the Secretary of Commerce shall become part of the environmental documentation prior to any approval action.

(f) The nature and timing of the requirements related to actions affecting a coastal zone are such that any issues raised should normally be resolved by the sponsor during the environmental assessment process. Successful resolution will usually mean that any impact with respect to an approved coastal zone management program is not significant and no further information is needed.

(14) *Prime and Unique Farmland.* (a) If any farmland is to be converted to other uses as a direct result of the proposed action or induced development, the local office of the USDA shall be contacted to determine if the farmland is identified as prime or unique. If it is not prime or unique, the contact shall be documented in the environmental assessment and no further analysis is necessary.

(b) If prime or uniques farmland is to be converted, the environmental assessment shall describe present uses of the farmland, the amount to be converted compared with the total amount of such land in the area, and any proposed mitigation measures. The local USDA office should be asked to review this information and, unless the USDA indicates that the conversion constitutes a potential significant loss, no further assessment is needed except to document the result of the USDA review.

(c) If the USDA does indicate a potential significant loss, the instructions in paragraph 85n apply.

(15) *Energy Supply and Natural Resources.* (a) Energy requirements associated with the action fall generally into two categories: those which relate to changed demands for stationary facilities (e.g., airfield lighting and terminal building heating) and those which involve the movement of air and ground vehicles. For purposes of the environmental assessment, the proposal shall be examined to identify any proposed major changes in stationary facilities which would have a measurable effect on local supplies. If there are major changes, power companies or other suppliers of energy shall be contacted to determine if projected demands can be met by existing or planned source facilities. Increased consumption of fuel by aircraft need only be examined if average ground movement or runup times are increased substantially without offsetting efficiencies in operational procedures or if the action includes a change in flight patterns, such as from noise abatement procedures, which adds noticeably to flight times. Ground vehicles' fuel consumption shall be examined only if the action would add appreciably to access time or if there would be a substantial change in movement patterns for on-airport service or other vehicles.

(b) Use of natural resources other than for fuel need be examined only if the action involves a need for unusual materials or those in short supply.

(c) For most airport actions, changes in energy or other natural resource consumption will not result in significant impacts. If the environmental assessment identifies problems with demands exceeding supplies, changes in aricraft or ground vehicle use which would greatly increase fuel consumption, or the proposed subtantial use of natural resources in short supply, additional analysis will be required in an environmental impact statement per paragraph 85o. Otherwise, it may be assumed that impacts are not significant.

(16.) *Light Emissions.*

(a) The sponsor shall consider the extent to which any lighting associated with an airport action will create an annoyance among people in the vicinity of the installation. The following information shall be included in the environmental assessment whenever the potential for annoyance exists:

1 Site location of lights or light systems.

2 A brief description of the light system as to its purpose, method of installation (pole or ground mounted), beam angle, intensity, color, flashing sequence, and other pertinent characteristics of the particular system and its use.

3 Measures to lessen any annoyance, such as shielding or angular adjustments.

(b) Only in unusual circumstances, as for example when high intensity strobe lights would shine directly into people's

homes, will the impact of light emissions be considered sufficient to warrant special study and a more detailed examination of alternatives in an environmental impact statement. Normally, it may be concluded that no significant impact would occur.

(17) *Solid Waste Impact.* (a) Airport actions which relate only to airfield development (runways, taxiways, and related items) will not normally include any direct relationship to solid waste collection, control, or disposal other than that associated with the construction itself (reference paragraph 47e(18)).

(b) Terminal area development may involve circumstances which require consideration of solid waste impacts. Preliminary review should indicate if the projected quantity or type of solid waste generation or method of collection or disposal will be appreciably different than would be the case without the action. If there is an appreciable difference, consultation with local officials shall determine if there is any potential problem with either capacity of available disposal facilities or location which may violate any local, state, or Federal regulations. Special attention shall be given to the control of hazardous waste and to the location of any dumps or landfills near the airport. In the latter case, Order 5200.5, FAA Guidance Concerning Sanitary Landfills On or Near Airports, shall be consulted to assure compliance.

(c) The environmental assessment shall document the results of consultation, the nature of any potential problems, and the manner to be used in control of waste products to comply with any applicable regulations. If necessary to explain the problem, an estimate of current and projected quantities of waste production and disposal capacity shall be included. Only if there are any significant unresolved issues will any additional analysis be needed in an environmental impact statement.

(18) *Construction Impacts.* (a) Specific effects during construction which may create adverse environmental impacts include noise of construction equipment on the site, noise and dust from delivery of materials through residential streets, creation of borrow pits and disposal of spoil, air pollution from burning debris, and water pollution from erosion. The extent to which any of these effects are subject to local, state, or Federal ordinances or regulations shall be discussed as applicable together with measures to be taken to conform with such requirements.

(b) In general, impacts during construction are of lesser magnitude than long term impacts of the proposed action. Many of the specific types of impacts which could occur will be covered in the descriptions of other impact categories. To the extent not discussed elsewhere, this item shall include a general description of the type and nature of the construction and measures to be taken to minimize potential adverse effects. As a minimum, reference shall be made to the incorporation in project specifications of the provisions of Advisory Circular 150/5370-7, Airport Construction Controls to Prevent Air and Water Pollution.

(c) Only in unusual circumstances, as for example construction in an ecologically sensitive area or construction involving substantial urban effects, would this impact category be considered to create significant consequences which may not be adequately mitigated. It is a matter of FAA judgment to determine if such circumstances exist and require the preparation of an environmental impact statement.

f. *Environmental Consequences—Other Considerations.* To the extent not covered in the Specific Impact Categories under paragraph 47e, the Environmental Consequences section of the environmental assessment shall include discussion of the following:

(1) "Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned" (CEQ 1502.16(c)). The threshold of significance is provided in paragraph 24e(1).

(2) ". . . [A]ny inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned)" (CEQ 1506.2(d)). The threshold of significance is provided in paragraph 24f(4).

(3) "Means to mitigate adverse environmental impacts . . ." (CEQ 1502.16(h)) which were not included in the Alternatives section and are important in judging the significance of an impact or in supporting a section 16(c)(4) finding that "the proposed action includes all possible steps to minimize any adverse effects."

(4) Degree of controversy on environmental grounds or with respect to the availability of adequate relocation housing. The threshold of significance is provided in paragraph 24b.

g. *Preparers.* The preparers of an environmental assessment are to be listed in similar fashion to those of an environmental impact statement (see paragraph 87).

h. *Appendices.* The environmental assessment shall have appended to it the following:

(1) Any documentation supporting statements in the body of the environmental assessment, including methodologies and sources used. Such documentation should be minimal in an environmental assessment.

(2) An air and water quality certification pursuant to section 16(e) of the Airport Act if one is required and has been obtained at this stage.

(3) A listing of agencies and persons consulted and any responses.

(4) Evidence that A-95 coordination has taken place, comments and recommendations received through the A-95 review process, and responses to such comments.

(5) A summary of citizen involvement, evidence of the opportunity for a public hearing if required under section 16(d) of the Airport Act, and a summary of issues raised at any public hearing held.

(6) Any cost-benefit analysis that the sponsor has done. See CEQ 1502.23 for more specific information when a cost-benefit analysis is being considered for the proposed action.

48. *A-95 Review Process.* a. Review of proposed Airport Development Aid Program actions by state and local government organizations routinely occurs through procedures set forth in OMB Circular A-95 (Revised). The purpose of the A-95 clearinghouse process is to assure that proposed federally assisted programs and projects are reviewed and evaluated in advance in terms of their potential impact on or conflict with statewide or areawide comprehensive planning or upon the plans and programs of local governements. In the case of proposed actions which are not Airport Development Aid Program actions, it is suggested that the sponsor consider use of the A-95 review procedure to solicit input to the environmental assessment from state and local agencies in order to reduce the need for independent contacts with affected agencies.

b. The A-95 clearinghouse process for projects is set forth in Special Federal Aviation Regulation, Part 35.

c. Under A-95 procedures, sponsors are required to notify the appropriate clearinghouses as soon as project planning has developed in sufficient detail to inform the clearinghouses of the nature and scope of the development proposed to be undertaken for which Federal assistance will be sought. This should take place at least 60 days prior to the date the sponsor submits its

preapplication form requesting Federal assistance.

d. During the initial clearinghouse review period, the preapplication for Federal aid may be completed. This period may also be used to complete the requirement for public hearings, if applicable. The A–95 procedure includes provisions for consideration of the project's probable impact on the environment and input from areawide and local agencies authorized to develop and enforce environmental standards or which have expertise or jurisdiction with respect to environmental impacts. An appropriate vehicle to solicit such input is the environmental assessment.

e. The clearinghouse should be asked to inform known interested groups of the project. If either the sponsor or FAA has knowledge of such groups, this information should be given to the clearinghouse. During this same period, the clearinghouse may act as liaison between the agencies affected and the sponsor, arranging meetings and such other forms of consultation as may be necessary to work towards resolution of any problem raised by the proposed project.

f. The comments and recommendations received through the A–95 clearinghouse process become input to the sponsor's environmental assessment and ultimately must be reported and appropriately addressed in the FAA's environmental documentation.

49. *Public Hearing.* a. If a new airport location, a new runway, or an extension of an existing runway is involved, the sponsor must afford the opportunity for public hearings as required by section 16(d)(1) of the Airport Act. The public hearing opportunity shall normally be afforded prior to formal submission of a sponsor's environmental assessment.

b. In deciding whether a public hearing is appropriate in other cases, the FAA and sponsor shall consider whether there is:

"(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

"(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful . . ." (CEQ 1506.6(c)(1) and (2)).

c. In preparing for a public hearing, the sponsor is required to comply with the requirements in section 152.73 of the Federal Aviation Regulations. Notice of the hearing is required to be published in an areawide or local newspaper of general circulation and shall include:

(1) The intent to undertake the proposed airport development, with a concise description of the proposed development;

(2) The opportunity for a public hearing;

(3) The scheduling of a public hearing (time, date, and place), if requested by interested parties; and

(4) The availability and location of the environmental assessment.

d. Additional information concerning the public hearing is contained in Advisory Circular 150/5100–7A. Hearings may be held by the sponsor simultaneously with the A–95 review process. The environmental assessment is to be made available for public examination at least 30 days prior to the hearing and so indicated in the hearing notification. Comments received through the A–95 process should be made available at the public hearing if the A–95 process has been completed.

e. A detailed summary of issues raised in public hearings is to be included in the environmental assessment. A hearing transcript need not be included, but at least one copy of the transcript must be obtained by the sponsor for the record. The sponsor must furnish a copy of the transcript to the FAA upon request.

50. *FAA Submission.* The sponsor shall revise the environmental assessment as necessary as a result of the A–95 review, any public hearing, and other input and shall submit a completed assessment per paragraph 47 to the FAA. The environmental assessment shall be submitted, depending upon the type of action proposed, at any time in the project formulation but not later than:

a. Sponsor's preapplication for Federal aid.

b. Sponsor's request for FAA approval of a new or revised airport layout plan.

c. Sponsor's request for FAA approval of an airport site.

d. Sponsor's request for conveyance of government lands for airport purposes under section 23 of the Airport Act.

e. Sponsor's request for FAA approval of a release of airport land.

The FAA may require corrections or additional information from the sponsor before accepting the environmental assessment. The FAA's acceptance of the environmental assessment will be indicated by the signature of the responsible FAA official on the cover page. From this point on, the environmental assessment is a Federal document for which the FAA is responsible. The number of copies of the environmental assessment submitted to the FAA shall be determined by consultation with the FAA and, for findings of no significant impact, shall include a copy designated as a reproducible master which must be of good quality.

51. *FAA Completion of Environmental Assessment and Decision.* a. The FAA is responsible for making the judgment, based on the environmental assessment and any other known information, of whether the action choice should be an environmental impact statement or a finding of no significant impact and shall inform the sponsor of this decision.

b. If no thresholds in subparagraphs 47e and f are exceeded for the proposed action, the environmental assessment, when evaluated and accepted by the FAA, will have been completed. The FAA decision will be to prepare a finding of no significant impact.

c. If some thresholds are exceeded, the environmental assessment may not have been completed when it is evaluated and accepted from the sponsor by the FAA, and the FAA may not be able to make a decision on the appropriate action choice until completing further evaluation and consultation. This situation may occur for two reasons. One is that a number of thresholds of significance may produce borderline cases which require further FAA evaluation, in consultation with appropriate officials having jurisdiction and expertise, in order to make a final judgment on whether impacts are significant. The second reason is that there are some consultations, such as the section 7(a) consultation under the Endangered Species Act Amendments or the consultation with the Advisory Council on Historic Preservation, which are required when specific categories of impacts may be of significant concern and for which the FAA rather than the sponsor must take the lead. If applicable, these further evaluations and/or consultations are included under the appropriate impact categories of paragraph 85. Paragraph 85, therefore, includes considerations involving potential significant impacts which may not, upon further evaluation, require the preparation of an environmental impact statement. When enough evaluation and applicable consultations have been completed by the FAA to judge for each category of impact whether the impact is significant or not, the FAA shall compete the documentation of the environmental assessment and make its decision on the action choice.

d. In order to minimize overall environmental processing time, sponsors should inform the FAA as soon as they find that their initial analysis exceeds thresholds of significance. Consultations

can then be initiated without delay and advice offered on what the needs for additional information for more detailed analyses are likely to be. These further actions do not need to wait on the sponsor's final submission of the environmental assessment but can be pursued simultaneously with the environmental assessment preparation.

e. To assist in resolving uncertainties on whether impacts are significant, it may be prudent to initiate scoping prior to a firm final decision to prepare an environmental impact statement and prior to issuing a Notice of Intent per paragraph 74b(1). Scoping, under these circumstances, may eliminate from detailed study all issues as insignificant and thereby lead the responsible official to determine that a finding of no significant impact is the appropriate action choice. If the FAA has announced a decision to prepare an environmental impact statement and issued a Notice of Intent ot this effect, CEQ 1501.7(c) provides the authority to revise previous determinations on the significance of impacts when applicable.

52. *Availability of Environmental Assessments.* After the FAA has evaluated and accepted the environmental assessment, this document shall be made available to the public pursuant to CEQ 1506.6.

53.–59. *Reserved.*

Chapter 6. Finding of No Significant Impact

60. *Requirement for Finding of No Significant Impact.* a. CEQ 1501.4(e) provides that the Federal agency shall "Prepare a finding of no significant impact (section 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement." Section 1508.13 defines a finding of no significant impact as ". . . a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (section 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared." The FAA will evaluate the environmental assessment to determine if any alternative which provides a good solution to the problem has no significant impacts. Unless there is an overriding reason for not selecting such an alternative, the FAA will then proceed with the preparation of a finding of no significant impact. This decision point is identified as step 13 in figure 1. The process for a finding of no significant impact is shown in steps 14 through 23 in figure 1.

b. For the FAA Airports Program there are two types of findings of no significant impact. The first type shall be designated simply "Finding of No Significant Impact" and includes proposed actions which have been found by the FAA not to have a significant impact on the environment and which require no specific coordination under the Airport Act. The second type shall be designated "Finding of No Significant Impact-Section 16(c)(4) Coordination" and includes proposed actions which do not have a significant impact, but do require coordination with DOI and EPA pursuant to the Airport Act.

61. *Special Considerations.* Paragraph 94 identifies the special assurances, conclusions, and findings which apply to airport Development Aid Program projects, to projects involving the use of section 4(f) lands, to projects involving the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and to other environmental areas. Insofar as they apply to proposed actions, there must be appropirate analyses and evidence in the finding of no significant impact to support these considerations.

62. *Format and Content.* a. The CEQ Regulations do not specify a format for the finding of no significant impact. CEQ 1508.13 does briefly indicate content of the document: "It [the finding of no significant impact] shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (section 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference."

b. Both types of Airports Program findings of no significant impact shall use the following documentation.

(1) A heading which shall read:

"Department of Transportation

Federal Aviation Administration

Finding of No Significant Impact (or)

Finding of No Significant Impact-Section 16(c)(4) Coordination"

(2) The airport name, location, and proposed Federal action.

(3) Reasons why the FAA has determined that the proposed action will have no significant impacts, referencing the environmental assessment. CEQ 1502.2(b) states ". . . there should be only enough discussion to show why more study is not warranted."

(4) Any mitigation measures which are a condition of Federal approval.

(5) The environmental assessment with its appendices.

(6) For Airport Development Aid program projects, a letter from the sponsor giving specific land use assurances if the FAA is not satisfied that the information in the environmental assessment provides a satisfactory basis for making a standard assurance pursuant to section 18(a)(4) in the grant.

63. *Coordination.* a. *General.* Appropriate Federal, state, and local coordination must have been completed as described in Chapter 5 for any applicable areas of environmental consideration. In all cases, coordination with the State Historic Preservation Officer is required. In addition, other informal coordination as may be considered prudent by the region may be carried out to satisfy the FAA regarding the extent of specific impacts. All proposed findings of no significant impact shall be reviewed by any affected FAA program division and staff official at the regional level before finalization. Findings of no significant impact which are not section 16(c)(4) actions may be approved without headquarters level review or other formal Federal review unless under some special purpose law, regulation, or executive order. This is shown as step 15 in figure 1.

b. *Section 16(c)(4) Actions.* (1) Section 16(c)(4) of the Airport Act requires consultation with DOI and EPA regarding the effects which a new airport, new runway, or major runway extension may have on natural resources. Proposed findings of no significant impact which are section 16(c)(4) types of actions shall be distributed for formal Federal review as follows:

(a) One copy to the Office of Airport Planning and Programming (Attention: APP-600).

(b) Five copies to EPA regional offices.

(c) The same number of copies to DOI as required for draft environmental impact statements, sent directly to the same address in Washington as given in paragraph 91.

(d) It may also be necessary to send copies to the Department of Agriculture (USDA) or the Department of Housing and Urban Development (HUD) if section 4(f) land under their jurisdiction is involved.

(2) Copies to EPA and DOI are to be accompanied by a transmittal letter explaining the purpose of the consultation. A time limit for review of not less than 45 days after receipt of the letter shall be established after which it may be presumed that the agency consulted has no comment. Differences

of opinion that develop as a result of section 16(c)(4) consultation shall be resolved at the field level to the extent possible. Any unresolved issues, including objections on the adequacy of the assessment of impacts or alternatives or objections to the proposed section 16(c)(4) action, shall be identified and called to the attention of the approving official. It should be noted that the roles of DOI and EPA are of consultation, not concurrence, on section 16(c)(4) actions. After consultation, it is FAA's responsibility to give due consideration to the comments received and to make the decision as to whether the action should be approved as a finding of no significant impact. Reference steps 16 through 20 in figure 1.

(3) The copy received by the Office of Airport Planning and Programming will receive limited review for the purpose of evaluating the quality of the proposed finding of no significant impact/section 16(c)(4) coordination. No concurrence by the Office of Airport Planning and Programming on individual 16(c)(4) actions is required. No further distribution is made within FAA or DOT headquarters.

c. *Special Circumstances.* CEQ 1501.4(e)(2) provides that "In certain limited circumstances . . . the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin." The responsible official shall determine whether either of the circumstances below apply. The 30-day public review period may run concurrently with the Federal review for section 16(c)(4) actions.

(1) "(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement . . ." (see paragraph 21b of this appendix).

(2) "(ii) The nature of the proposed action is one without precedence."

64. *Approval.* a. The decision to approve this action choice may be made by the FAA approving official. In addition to the information described in paragraph 62, the final document shall include any other material which contributes to the finding, including documentation of EPA and DOI coordination for 16(c)(4) actions. If comments from EPA, DOI, or others object to the preliminary conclusion that there are no significant impacts, additional evidence may be necessary to support this conclusion (which evidence shall be furnished to the commenting agency) or the FAA may decide to prepare an environmental impact statement.

b. Section 16(c)(4) coordinations require review by the regional counsel for legal sufficiency. If a proposal involves section 4(f), the finding of no significant impact shall also be reviewed for legal sufficiency by the regional counsel (steps 19 and 20, figure 1).

c. The Federal approval shall include the following: "After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of NEPA."

Approved: _____
Date: _____
Disapproved: _____
Date: _____

65. *Final Distribution.* After a finding of no significant impact/section 16(c)(4) coordination is approved, the region shall send one copy of the approved package to EPA, DOI (in Washington), and APP-600 for record purposes. (If no changes have been made since the circulation of the package, no additional copy of the circulated document need be included in the final package sent to APP-600.) Otherwise, distribution of approved findings of no significant impact outside the region is not required. However, the document shall be made available upon request per CEQ 1506.6 (step 21, figure 1).

66. *Public Availability.* CEQ 1501.4(e)(1) states: "The agency shall make the finding of no significant impact available to the affected public as specified in section 1506.6." The regional office shall comply with section 1506.6 and shall formulate a system for announcing the availability of the finding of no significant impact through appropriate media in the area affected and in cooperation with the sponsor of the project. The announcement shall indicate the availability of the finding of no significant impact for review which shall include FAA regional and district offices, the sponsor's office, and other appropriate locations of general public access. Copies of findings of no significant impact shall be provided, on request, free of charge or at a fee commensurate with the cost of reproduction (step 22, figure 1).

67. *Decision and Implementation.* a. Immediately following the approval of a finding of no significant impact, the decision may be made on the Federal action (step 23, figure 1).

b. Any mitigation measures which were made a condition of approval of the finding of no significant impact shall be included in the decision and steps taken as described in paragraph 99 to assure appropriate commitment and follow-up of mitigation measures. Proposed changes in or deletions of mitigation measures which were a condition of approval of the finding of no significant impact must be reviewed by the same FAA offices which reviewed the original document and must be approved by the finding of no significant impact approving official.

c. A record of decision is not required for findings of no significant impact. However, prior to the Federal action and based upon the data presented in the finding of no significant impact, the decisionmaker must reach and document the appropriate assurances as delineated in paragraph 94b. These assurances may be incorporated in a letter or other documentation attached to the Federal action and signed by the FAA decisionmaker.

d. If the decisionmaker wishes to take an action which was included as an alternative in the finding of no significant impact and which involves a special interest (e.g., section 4(f) land, endangered species, wetlands, historic site, or others), the FAA must first complete any required evaluation and consultation that has not been done, supplementing the original finding of no significant impact, prior to taking the action. Supplements to findings of no significant action shall be reviewed and approved as appropriate for the type of action (i.e., whether or not pursuant to section 16(c)(4)).

e. If the alternative on which the decisionmaker now wishes to take action has potential significant impacts, the FAA shall issue a notice of intent to prepare an environmental impact statement and commence scoping.

68.–69. *Reserved.*

Chapter 7. Environmental Impact Statement Preparation

70. *General.* This chapter and the subsequent two chapters describe the preparation, content, and processing of an environmental impact statement pursuant to section 102(2)(C) of NEPA. The process leading to a decision by FAA to prepare an environmental impact statement is described in Chapter 5. The circumstances of the proposed action which warrant the

preparation of an environmental impact statement are contained in Chapter 3, paragraphs 21 and 24. This chapter explains the purpose of an environmental impact statement and the manner in which it is to be prepared. It describes the scoping process, the assignment of responsibilities for input, and contracting for environmental impact statement preparation (see steps 24 through 29 in figure 1).

71. *Purpose.* CEQ 1502.1 states that "The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act [NEPA] are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions."

72. *Implementation.* a. To achieve the purpose set forth above, environmental impact statements are to be prepared in the manner prescribed in CEQ 1502.2.

b. The need for interdisciplinary preparation is stated in CEQ 1502.6, which provides that "Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process . . . ."

c. Other sections of the CEQ Regulations which apply generally to the preparation of environmental impact statements and their application to airport actions are described below.

(1) CEQ 1502.4(a) states in part that "Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined" and that "Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement."

(2) CEQ 1502.4(b) provides that "Agencies shall prepare statements on broad actions [such as the adoption of new agency programs or regulations] so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking." In the Airports Program, the principal example of an environmental impact statement for a broad action is the one prepared in conjunction with the National Airport System Plan.

(3) CEQ 1502.5 provides that "An agency shall commence preparation of an environmental impact statement as close as possible to the time that the agency is . . . presented with a proposal. . . ." For airport actions, formal preparation shall normally commence with the scoping process immediately after it is determined by the FAA responsible official at the region or airports district office level that an environmental impact statement is necessary. This decision point is identified in the flow diagram (figure 1) as step 13. Nothing in this order shall preclude earlier commencement of the gathering of information and preparation for the scoping process as described in paragraph 74, below.

(4) CEQ 1502.8 states that "Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them."

(5) CEQ 1501.8 describes the circumstances when the setting of time limits for the NEPA process may be appropriate and the factors which should be considered.

73. *Limitations.* CEQ 1506.1 deals with limitations on actions during the NEPA process. Key provisions which relate to proposals for airport actions include the following:

a. "(a) Until an agency issues a record of decision [described in paragraph 98 of this appendix] . . . no action concerning the proposal shall be taken which would:

(1) "(1) Have an adverse environmental impact; or

(2) "(2) Limit the choice of reasonable alternatives."

b. "(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved."

c. "(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance."

74. *Scoping.* a. The general requirement for scoping is contained in CEQ 1501.7 which provides that "there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping." The responsible official must assume a key role in managing the preparation of an evnironmental impact statement or project in his jurisdiction. (In the context of scoping, the responsible official is the official in charge of preparation of the environmental impact statement for the lead agency. Where joint lead agencies are involved, the other agency(s) may share in the responsibility for scoping with the FAA.) Scoping is a major element. The responsible official must take the lead in the scoping process, including issuance of the notice of intent, inviting the participation of other agencies and interested persons pursuant to CEQ 1501.7(a)(1), determining the issues to be analyzed in depth, and assigning responsibilities for inputs to the environmental impact statement. CEQ 1501.7 further describes these steps in detail.

b. (1) The first step is described in section 1501.7 as follows: "As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (section 1508.22) in the **Federal Register**. . . ." Regions shall follow regional counsel procedures for filing notices in the **Federal Register** through the Office of the Chief Counsel, Rules Docket.

(2) The notice of intent in section 1508.22 ". . . means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

"(a) Describe the proposed action and possible alternatives.

"(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

"(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement."

(3) It should be noted that there is no requirement for a scoping meeting, per se, on every project requiring an environmental impact statement. Depending on the nature and complexity of the project, some or all of the information needed during the scoping process may be obtained by letter or telephone.

(4) If for some reason there is a lengthy period between the time a decision is made to prepare an environmental impact statement and the actual preparation, section 1507.3(e) provides that "... the notice of intent ... may be published at a reasonable time in advance of preparation of the draft statement."

c. Section 1501.7 further provides that the lead agency shall "Determine the scope (section 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement." Scope as defined in CEQ 1508.25 "... consists of the range of actions, alternatives, and impacts to be considered...." To determine the range of actions, the problem as described in the environmental assessment shall be carefully reviewed. The proposed action and any actions functionally related to it (see paragraph 26 of this appendix) must be clearly understood. Alternatives shall be reviewed in this context, identifying those which need to be rigorously explored and objectively evaluated as well as those which can be eliminated (see paragraph 74c above and CEQ 1502.14(a)). The range of impacts and areas requiring further study shall be determined by review of the environmental assessment and the criteria set forth in paragraphs 47e, 47f, and 85 of this appendix. Those impact categories which fall below the threshold of significance in the environmental assessment normally do not need further study or description in the environmental impact statement. Establishing a clear definition of the Federal action, the alternatives, and the impacts needing detailed study (as well as those which do not) early in the scoping processing should help considerably in managing the environmental impact statement preparation process.

75. *Assigning Responsibilities.* a. An integral part of the scoping process as described in paragraph 74 is the allocation of assignments for preparation of the environmental impact statement by the responsible official among the lead and cooperating agencies (step 26 in figure 1). The purpose and role of cooperating agencies are described in CEQ 1501.6.

b. Federal agencies which shall be invited by the responsible official to be cooperating agencies are those with jurisdiction by law in areas which may be affected by airport development.

c. Federal agencies with special expertise may also be asked to be cooperating agencies.

d. If a Federal agency that is requested to be a cooperating agency replies pursuant to CEQ 1501.6(c) that it will not participate, two copies of such letter shall be sent to APP-600 which will forward one copy to the Office of the Assistant Secretary for Policy and International Affairs, P-1. A copy of the draft environmental impact statement shall be sent to such agency. If that agency has adverse comments on the draft, the matter shall be referred to APP-600 for subsequent discussion with CEQ through P-1.

e. The definition of a cooperating agency in CEQ 1508.5 includes the provision that "A State or local agency of similar qualifications [i.e., jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal] or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency." To the extent that such agencies have not provided sufficient information during the A-95 review process or other earlier consultation, their use as cooperating agencies in the environmental impact statement preparation is encouraged. Their inputs may be especially important in areas which have been identified as significant environmental issues and where specific environmental laws and regulations are involved. The respective roles of Federal and state or local agencies in given area (e.g., impacts on fish and wildlife resources) shall be clearly identified and understood in the assignment of responsibilities for environmental impact statement inputs.

f. The airport sponsor shall be one of the key participants in the scoping process and must be kept abreast of the areas of impact being studied, especially those which have a direct effect on the operation of its airport. The sponsor shall be apprised of any mitigation measures or alternatives being proposed and shall be consulted regarding its ability or willingness to carry out any provisions which may subsequently be imposed as grant conditions or other means to reduce environmental harm. The sponsor may also be the principal linkage with the affected communities in assuring, for example, that all reasonable measures have been or will be taken to provide compatible land uses in the airport environs.

g. It is incumbent upon the responsible official, in assigning responsibilities and managing the environmental impact statement preparation, to assure that those providing input appreciate the need for timely submittal and focus of the analysis on the pertinent issues at hand. This official shall monitor progress and coordinate efforts to avoid duplication or misunderstanding among the parties involved and assure that all necessary areas are covered. The schedule for preparation of each item of information should take into consideration any dependencies that may exist. For example, it may not be possible to complete analysis in one area without having obtained information from another. The objective of the responsible official is the production of a draft environmental impact statement which will deal sufficiently with the critical and significant issues to avoid or minimize critical comments during the required review period to follow.

76. *Contracting.* a. Chapter 2 of this appendix describes in general the requirements and responsibilities of the FAA and state and local agencies in meeting the requirements of NEPA and the CEQ Regulations. The degree to which state and local agencies can be involved is dependent upon whether a state agency has statewide jurisdiction or what type of state or local environmental laws or regulations exist. These distinctions are important in determining what roles agencies may play in the preparation or contracting for the preparation of an environmental impact statement as discussed below.

b. (1) State agencies with statewide jurisdiction pursuant to section 102(2)(D) of NEPA may act as a joint lead agency for the preparation of the environmental impact statement as long as the FAA furnishes guidance and participates in such preparation and independently evaluates the statement prior to its approval and adoption (reference NEPA, section 102(2)(D)(ii) and (iii)). (Also, see paragraph 31 for the definition of NEPA 102(2)(D) states.)

(2) Agencies subject to state or local requirements comparable to NEPA shall be joint lead agencies (unless specifically barred by some other law) in cooperation with FAA. Such cooperation, in the words of CEQ 1506.2(c), "* * * shall to the fullest extent possible include joint environmental impact statements."

(3) State or local agencies which do not qualify as lead agencies under the conditions given in (1) and (2) above

may not be lead agencies but may be cooperating agencies if they have jurisdiction by law or special expertise with respect to environmental impacts involved (see paragraph 75e).

c. ECQ 1506.5(c) provides that "* * * any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under section 1501.6(b), a cooperating agency." Further, it is intended that "* * * the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest."

d. Under the provisions set forth above and when a determination has been made to have a contractor prepare the environmental impact statement, the contractor shall be selected either by the FAA *or:*

(1) A state agency with statewide jurisdiction and responsibility for action per section 102(2)(D) of NEPA.

(2) A state or local agency which is subject to state NEPA-like laws or regulations.

(3) A local agency which is subject to local NEPA-like laws or regulations.

A cooperating agency may also select contractors. However, its role is limited to providing information and analyses within its own area of special expertise or jurisdiction. It may obtain such data by contract under its own selection procedures. It would not be expected to select a contractor to prepare the entire FAA environmental impact statement.

e. In any case where a contractor prepares an environmental impact statement, section 1506.5(c) requires that "Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency [for its portion], specifying that they have no financial or other interest in the outcome of the project." Furthermore, "* * * the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents."

f. When an agency as defined in paragraph d above elects to use a contractor to prepare an environmental impact statement, the contractor may be under contract either to that agency or the sponsor as long as the contractor is selected by the lead agency. The selection processes to be used will be based on principles in Advisory Circular 150/5100–9. This advisory circular was written to provide guidance to airport sponsors in the selection and employment of architectural, engineering, and planning consultants under the FAA Airport Development Aid and Planning Grant Programs. However, its principles apply to the selection of contractors to prepare environmental impact statements. The selection criteria and procedures therein shall be applied to the fullest extent applicable—with the obvious exception that FAA (or other lead agency) makes the selection. Further, the selecting agency must advise potential contractors of the requirement to sign the disclosure statement described in paragraph e above.

77. *Use of Information.* a. CEQ 1506.5(c) specifically provides "Nothing * * * is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency."

b. The use of information obtained in the manner set forth above may obviate the need for extensive contractual efforts in preparing an environmental impact statement. It must be cautioned, however, that any information received from the airport sponsor or others may only be used after analysis and acceptability of its contents by the FAA. Further, to the extent that the information represents a significant background paper, the names and qualifications of those persons primarily responsible for its preparation together with the identification of persons responsible for particular analyses shall be listed for incorporation in the list of preparers of the environmental impact statement (see paragraph 88 in Chapter 8 of this appendix).

78. *Preparation of a Draft Environmental Impact Statement.* As a result of the scoping process, the responsible official shall have obtained a detailed analysis of the significant issues and impacts from the various cooperating agencies and others who were assigned responsibilities as described in paragraph 75. The responsible official's task of preparing the environmental impact statement at this point involves collating the results, conducting a detailed evaluation, and adding the necessary cover sheet, summary, etc. as may be needed to complete the document and prepare it for circulation. If a contractor has been hired to prepare the environmental impact statement, the responsible official is still required to independently evaluate the statement and be responsible for its scope and contents. When in-house expertise is insufficient to evaluate independently, it may be necessary to supplement FAA expertise with either cooperating agency or independent contractor assistance. A detailed description of the environmental impact statement contents is given in Chapter 8. Processing of the completed document is described in Chapter 9.

79. *Reserved.*

Chapter 8. Environmental Impact Statement Contents

80. *Format.* a. CEQ 1502.10 recommends a standard format, which is to be followed for Airports Program environmental impact statements, as follows: "(a) Cover Sheet. (b) Summary. (c) Table of Contents. (d) Purpose of and Need for Action. (e) Alternatives Including Proposed Action. * * * (f) Affected Environment. (g) Environmental Consequences. * * * (h) List of Preparers. (i) List of Agencies, Organizations, and Persons to whom Copies of the Statement are Sent. (j) Index. (k) appendices (if any)."

b. CEQ 1502.11 through 1502.18 require the inclusion of specific information in respective sections of the environmental impact statement. The following paragraphs provide additional instructions.

81. *Cover Sheet, summary, and Table of Contents.* a. The cover sheet shall include the information required in CEQ 1502.11 plus a heading as follows:

"Department of Transportation

Federal Aviation Administration

Draft (or Final) Environmental Impact Statement

This statement is submitted for review pursuant to the following public law requirements: [List those applicable; e.g., section 102(2)(C) of the National Environmental Policy Act of 1969, section 16(c)(4) of the Airport and Airway Development Act of 1970, as amended, section 4(f) of the Department of Transportation Act of 1966]."

b. In addition to the requirments of CEQ 1502.12, Airports Program environmental impact statement summaries shall highlight evidence in the environmental impact statement which supports required assurances and indicate mitigation measures which are proposed. the summary of the final environmental impact statment shall specify any mitigation measures which are a condition of approval and identify any monitoring to be done. In addition, the final environmental impact statement summary shall identify the environmentally preferable alternative or alternatives and the FAA's preferred alternative (in most cases, the proposed

action), including reasons for these choices.

82. *Purpose of and Need for the Action.* CEQ 1502.13 states "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing alternatives including the proposed action." Normally, the purpose and need as described in the environmental assessment will suffice for purposes of the environmental impact statement.

83. *Alternatives, Including the Proposed Action.* a. CEQ 1502.14 states that "this section is the heart of the environmental impact statement." Further, it is to be "Based on the information and analysis presented in the sections on the Affected Environment [paragraph 84 of this appendix] * * * and the Environmental Consequences [paragraph 85]. * * *" Paragraph 47c includes key references and extent of analysis of alternatives in the environmental assessment. During scoping, the environmental assessment shall be reviewed for those alternatives which should be dropped from further consideration. However, eliminated alternatives are to be identified in the environmental impact statement with a simple explanation of why no further investigation was necessary. Alternatives covered in the environmental assessment may require expansion of certain portions. During the scoping process (paragraph 74), those areas needing additional work shall be identified.

b. Both section 16(c)(4) of the Airport Act and section 4(f) of the DOT Act require a finding that "no feasible and prudent alternative" exists. The terms "feasible" and "prudent" are separate criteria and refer to sound engineering principles and sound judgment, respectively. A construction alternative, for example, may be feasible if, as a matter of sound engineering principles, it can be built. It may not be prudent, however, because of safety, policy, environmental, social, or economic consequences. The environmental documentation must show that no feasible and prudent alternative exists when all factors (safety, national policy, efficiency, economic, social, and environmental) are considered.

c. When section 16(c)(4) of the Airport Act is applicable, the Secretary of Transportation shall authorize no project under the Airport Development aid Program involving airport location, a major runway extension, or runway location found to have an adverse effect unless he shall render a finding in writing, following a full and complete review, that no feasible and prudent alternative to the project exists and that all possible steps have been taken to minimize such adverse effect. The environmental impact statement must include sufficient information to support such a conclusion where applicable. However, the section 16(c)(4) finding is not made until the final decision on the action is rendered (see paragraph 98).

d. Project development involving section 4(f) of the DOT Act does not necessarily fall within the processing requirements of NEPA, section 102(2)(C). However, regardless of which action choice is appropriate, the documentation must contain an assessment of alternatives and evidence of planning to minimize harm to the section 4(f) land. to comply with section 4(f), it is necessary to show that a rejected alternative to a proposed action presents unique problems or that the costs or community disruption it entails reach extraordinary magnitudes. For additional guidance relative to section 4(f), see paragraphs 47e(7) and 85g.

e. A no practicable alternative finding is required for construction activity in a wetland area and for significant encroachment on a floodplain. this finding is further explained in paragraphs 47e(11)(e) and 47e(12)(g)3.

f. CEQ 1505.2 requires that an agency's record of decision specify the alternative or alternatives which were considered to be environmentally preferable. Whether an alternative is "environmentally preferable" is a matter of judgment on the part of the responsible official when considering the potential environmental impacts of the various alternatives considered.

84. *Affected Environment.* CEQ 1502.15 states that "The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement." The description of the affected environment as contained in the environmental assessment (reference paragraph 47d) will usually suffice for the environmental impact statement, unless there is a particular significant impact area for which additional data may be necessary to understand the effects.

85. *Environmental Consequences.* Per CEQ 1502.16, "This section forms the scientific and analytic basis for the comparisons under section 1502.14 [alternatives, as described in paragraph 83 above]. It shall consolidate the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) [alternatives] as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short term uses of man's environment and the maintenance and enhancement of long term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in section 1502.14. It shall include discussions of: "(a) Direct effects and their significance [reference section 1508.18 for definition of 'effects' both direct and indirect] . . . (b) Indirect effects and their significance . . . (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See section 1506.2(d) [Elimination of duplication with State and local procedures].) (d) The environmental effects of alternatives including the proposed action. The comparisons under section 1502.14 will be based on this discussion. (e) Energy requirements and conservation potential of various alternatives and mitigation measures. (f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures. (g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures. (h) Means to mitigate adverse environmental impacts (if not fully covered under section 1502.14(f))." Specific environmental impact areas to be discussed "as much as is necessary to support the comparisons [of alternatives]" are described in detail in the following subparagraphs. Impacts shall be analyzed for each alternative, including the proposed action which is treated in detail in the environmental impact

statement. The draft statement shall include, under appropriate impact categories, all applicable permit or license requirements and shall indicate any known problems with obtaining them. The draft statement shall also report on the status of any special consultation required (such as consultation under the Endangered Species Act Amendments, the National Historic Preservation Act, the Fish and Wildlife Coordination Act, etc.).

a. *Noise.* (1) Paragraph 47e(1) presents the requirements for a noise analysis and the information needed in an environmental assessment. When an initial analysis indicates that the circumstances in 47e(1)(d) are exceeded, then an additional time above threshold type anaylsis shall be done. Using a methodology approved by the FAA, the data shall include as a minimum the average duration above 65 to 115 decibels (in 10 decibel intervals) for existing and planned noise sensitive areas. The data shall be presented for a 24-hour day in evening (7 p.m. to 10 p.m.) and night (10 p.m. to 7 a.m.) periods on a grid pattern not to exceed 3,000-foot intervals. Equal noise exposure contours shall be developed for each alternative considered in detail in the environmental impact statement whenever any land use planning or noise abatement procedures are associated with the project. Such contours shall include at least the 65 and 75 Day/Night Level (or its Equivalent Noise Level) or 65 or 75 Community Noise Equivalent Level and shall be developed using the same data base as used for the time above analysis for each reasonable alternative.

(2) The text and graphics developed for the environmental assessment shall be reviewed and refined as necessary. Aerial photographs, when available, may be very helpful in illustrating the relationship of the airport to surrounding land uses and development. When the proposal will result in an increase in noise sensitive areas or numbers of people exposed to noise impacts and is highly controversial on this basis, the analysis shall include directly or by reference discussion of potential effects of noise on hearing, communication, and sleep interference, both for outdoor and indoor activities giving appropriate consideration to the effects of construction, climate, and lifestyles. Other discussion such as effects of noise on animals shall be included only to the extent relevant to the situation and based on available and reliable source data, which may be referenced.

(3) The analysis shall include noise from sources other than aircraft operations when the effects are comparable with or exceed aircraft noise. The result of any monitoring done to verify or refine noise data shall be included.

(4) Mitigation measures which are in effect or proposed, including noise abatement procedures and land acquisition, shall be described and the relationship to the proposal explained.

b. *Land Use.* When significant noise impacts occur over noise sensitive areas (e.g., residential neighborhoods; educational, health, and religious structures and sites; and outdoor recreational, cultural, and historic sites), the analysis shall include a discussion of the noise impact over each such area under various alternatives compared to existing conditions. This includes size and location of residential areas exposed to specific noise levels, numbers of people and schools impacted, and such other information as may be appropriate. Any mitigation measures to be taken in addition to those associated with noise impacts or relocation, such as insulation, changes in zoning, or other land use controls, shall be discussed. The greater the degree of existing and potential impacts over noise sensitve areas, the closer attention shall be paid to the requirements of section 18(a)(4) of the Airport Act, as described in paragraph 47e(2). The development and adoption of airport noise control and land use compatibility studies may be helpful in this regard.

c. *Social Impacts.* As set forth in paragraph 47e(3), when the environmental assessment indicates the potential for significant impact because of relocation or other community disruption, additional analysis is needed in the environmental impact statement to describe the degreee of impact and measures to minimize such adverse effects. If an insufficiency of available relocation housing is indicated or has engendered a high degree of controversy, a thorough analysis of efforts made to remedy the problem shall be reflected in the environmental impact statement including if necessary provision for housing of last resort as authorized by section 206(a) of the Uniform Relocation and Real Property Acquisition Policies Act of 1970. If business relocation would cause appreciable economic hardship on the community, if significant changes in employment would result directly from the action, or if community disruption is considered substantial, the environmental impact statement will include a detailed explanation of the effects and the reasons why significant impacts cannot be avoided.

d. *Induced Socioeconomic Impacts.* When the environmental assessment pursuant to paragraph 47e(4) indicates substantial induced or secondary effects directly attributable to the proposal, a detailed analysis of such effects shall be included in the environmental impact statement. As pertinent and to the extent known or predictable, such factors as effects on regional growth and development patterns, spin-off jobs created, and induced impacts on the natural environment shall be described.

e. *Air Quality.* Paragraph 47e(5) describes the requirements for air quality analyses for an environmental assessment. When the thresholds in paragraph 47e(5)(c) are exceeded or when the responsible official otherwise judges that a significant or highly controversial air quality issue exists, additional analysis shall be performed in consultation with the state air quality board, designated air quality region, and/or the EPA, as appropriate. The type of analysis required depends on the particular situation and the information needed by the state or Federal air quality officials who will be reviewing the results. If thresholds have been exceeded for a designated Nonattainment pollutant, pollution offset procedures must be taken in accordance with the EPA guidelines implementing section 173 of the Clean Air Act Amendments. Inclusion of state and Federal agencies with air quality expertise in the scoping process as cooperating agencies will be helpful in idenifying other specific analyses to be undertaken such as the investigation of hot spots, monitoring, or computer analysis of an air quality dispersion model which has been approved for use by the FAA's Office of Environment and Energy. Alternative mitigation measures may be included in detailed analyses. The air quality certification requirement for Airport Development Aid Program applications for projects involving airport location, runway location, or a major runway extension is described in paragraph 47e(5)(e).

f. *Water Quality.* Paragraph 47e(6) deals with the examination of potential water quality impacts in an environmental assessment. When the thresholds identified in paragraph 47e(6)(c) indicate the potential for significant water quality impacts, additional analysis in consultation with affected agencies will be necessary. Specific information or studies may be required by state or Federal officials with specific water quality types of jurisdiciton or permit responsibility. The

type of analysis required depends on the particular situation and may be determined through agreements reached during scoping. The wate quality certification requirement for projects involving airport location, runway location, or a major runway extension is discussed in paragraph 47e(5)(e).

g. *Department of Transportation Act, Section 4(f).* The data and analysis described in paragraph 47e(7) for the environmental assessment will identify if section 4(f) of the DOT Act is involved in the proposal and the results of early consultation to determine the effects and identify acceptable mitigation measures. When the threshold in paragraph 47e(7)(f) is exceeded, the FAA shall consult with the officials having jurisidiciton over the section 4(f) lands and other agencies as necessary. The environmental impact statement shall thoroughly analyze and document alternatives that would avoid the section 4(f) land and provide detailed measures to minimize harm.

h. *Historic, Architectural, Archeological, and Cultural Resources.* (1) The inital requirements for the evaluation of historical, architectural, archeological, and cultural resources are presented in paragraph 47e(8). If the thresholds in paragraph 47e(8)(b)*4* or 47e(8)(c)*6* are exceeded, further examination is necessary as indicated below under the appropriate law to which the threshold applies. If section 4(f) is involved as determined according to the instructions in paragraph 47e(8)(d), the analysis indicated in paragraph 85g above will apply if the impact on 4(f) land is significant. The DOT 4(f) section of the environmental impact statement may cross reference the historical/archeological analysis.

(a) National Historic Preservation Act of 1966, as amended.

1 When a determination of adverse effect has been made, the consultation procedures of the Advisory Council on Historic Preservation (36 C.F.R. Part 800.4(d)) shall be followed. The responsible official shall submit the preliminary case report and request comments from the Council, notify the State Historic Preservation Officer, and proceed with the consultation. (If the FAA is already preparing a draft environmental impact statement because of other significant impacts, this draft statement can be submitted as the preliminary case report. Circulation of the draft statement will constitute a request for Council comments if the FAA so requests in the cover letter transmitting the draft.) The sponsor shall provide information and participate in the consultation process with and under the guidance of the FAA. The consultation process includes consideration of feasible and prudent alternatives to avoid the adverse effects on National Register or eligible property, of mitigation measures, and of accepting adverse effects. If the consulting parties agree on an alternative to avoid or satisfactorily mitigate adverse effects, a memorandum of agreement shall be executed specifying how the proposed action will proceed to avoid or mitigate the adverse effects. In this case, the FAA may complete the environmental assessment by including in it the memorandum of agreement and may prepare a finding of no significant impact.

2 If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects but that it is in the public interest to proceed with the proposed action, a memorandum of agreement shall be executed. This memorandum may specify recording, salvage, or other measures that shall be taken to minimize adverse effects before the proposed action proceeds. It is likely that, in this circumstance, the impact on National Register or eligible properties will be considered significant and require the preparation of an environmental impact statement. The FAA has the final judgment on whether the appropriate action choice is an environmental impact statement or a finding of no significant impact. Advice from the Advisory Council and the State Historic Preservation Officer may assist the FAA in making this judgment.

3 The Advisory Council on Historic Preservation may be a cooperating agency in the preparation of an environmental impact statement. Information developed for and during the consultation process will be sufficient for purposes of environmental impact statement documentation. The final impact statement shall include comments of the Advisory Council and a copy of any memorandum of agreement. (If a memorandum of agreement has been executed prior to circulation of a draft environmental impact statement, the memorandum shall be included in the draft.) Within 90 days after carrying out the terms of a memorandum of agreement, the FAA is required to report to all signatories on the actions taken.

(b) Archeological and Historic Preservation Act of 1974.

1 When a determination of adverse effect has been made, the instructions in subparagraphs (a)(1), (2), and (3) apply except that the Hertiage Conservation and Recreation Service may be a cooperating agency for purposes of environmental impact statement preparation.

2 If salvage is involved, the FAA may use not more than 1 percent of the Federal share of the project for this purpose except that the 1 percent limitation does not apply if the project involves $50,000 or less.

3 If the FAA finds in the course of project construction that significant resources will be irrevocably lost or destroyed, the FAA must notify the Heritage Conservation and Recreation Service of this situation and include information relevant to the matter. The FAA then has a responsibility to take action in accordance with the Archeological and Data Preservation Act to recover, protect, and preserve such resources.

i. *Biotic Communities (including both flora and fauna).* (1) Paragraph 47e(9) presents the requirements for the analysis of biotic community impacts and the information needed in an environmental assessment. When the initial analysis indicates that the thresholds in subparagraph (c) or (d) are exceeded, the FAA shall make the judgment on the significance of potential impacts. The FAA will consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, state or local wildlife agencies, and others as necessary in order to make this judgment.

(2) If impacts are judged to be significant, further detailed analysis may include:

(a) Use of aerial photographs and field reconnaissance to verify biotic community types and to observe wildlife or its traces.

(b) Determining the significance of various habitats proposed for removal and species that would be displaced, including the importance of flora and fauna species inhabiting the area, the range of various species, and the location of nesting and breeding areas.

(c) A more detailed analysis of other impact areas (e.g., noise, air quality, water quality, induced development) as may be necessary to determine biotic impacts.

(d) Mitigation measures.

(e) A judgment as to what extent the proposed action and its alternatives will alter ecological systems.

(3) If the proposed project affects water resources and thereby invokes the Fish and Wildlife Coordination Act, the FAA shall give full consideration to the recommendations of the Fish and Wildlife Service and the state wildlife agency and shall assure that the project plan includes such justifiable means and

measures for wildlife purposes as the FAA finds should be adopted to obtain maximum overall project benefits.

(4) If significant biotic community impact relates either to use of section 4(f) lands or to endangered or threatened species, those sections of the environmental impact statement may incorporate or cross-reference the biotic community analysis as appropriate.

j. *Endangered and Threatened Species of Flora and Fauna.* (1) Paragrah 47e(10) presents the requirements for the analysis of potential impacts on endangered and threatened species and the information needed in an environmental assessment. When the biological assessment in paragraph 47e(10)(d) indicates an effect on endangered or threatened species or on critical habitat, the FAA shall forward the biological assessment to the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, whichever has jurisdiction, together with a request to initiate consultation under section 7(a) of the Endangered Species Act Amendments of 1978.

(2) If the biological opinion from the Fish and Wildlife Service or the National Marine Fisheries Service concludes that the proposed action is not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat, the FAA may conclude that impacts are not significant and prepare a finding of no significant impact. On the other hand, the biological opinion may conclude that the proposed action does pose jeopardy and may suggest reasonable and prudent alternatives to avoid jeopardizing species or adversely modifying critical habitat. In this case, if the FAA and the airport sponsor accept an alternative proposed by the Fish and Wildlife Service or the National Marine Fisheries Service or propose another alternative which proves acceptable to these Services, the FAA may also conclude that impacts are not significant.

(3) If neither of the above conditions in paragraph (2) apply, the potential impact is considered significant. In the preparation of an environmental impact statement, the FAA shall request the Fish and Wildlife Service or National Marine Fisheries Service to be a cooperating agency on the basis of their jurisdiction. Further detailed analysis may consider:

(a) Any previously unconsidered mitigation measures or project modifications which would lessen impacts so as not to jeopardize species or destroy or modify critical habitat.

(b) Whether further biologocal assessment would be profitable to pursue in terms of likelihood of changing the biological opinion.

(c) Whether the FAA or the airport sponsor will request an exemption under section 7(g) of the Endangered Species Act Amendments.

k. *Wetlands.* (1) Paragraph 47e(11) presents the requirements for the analysis of impacts on wetlands and the information needed in the environmental assessment. When the initial analysis indicates that the applicable thresholds are exceeded or when an agency having special interest in a wetlands area indicates potential significant impacts of the proposal, the FAA shall examine all relevant factors and make the judgment on the significance of the impacts. The FAA will consult as necessary with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Corps of Engineers, the EPA, and state and local natural resource and wildlife agencies in order to make this judgment. Any of these agencies may become cooperating agencies on the basis of their jurisdiction or expertise. Permitting agencies may become joint lead agencies. The FAA shall make every effort to assure that any environmental document prepared by the FAA meets the needs of permitting agencies. (Reference paragraphs 75b and 75c.)

(2) If impacts are judged to be significant, further detailed analysis shall include the following as applicable to the proposal:

(a) Considerations specified in Executive Order 11990, Protection of Wetlands:

1 "public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;"

2 "maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources;"

3 "other uses of wetlands in the public interest, including recreational, scientific, and cultural uses."

(b) An opinion, based on the above considerations, of the proposal's overall effect on the survival and quality of the wetlands.

(c) Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.

(d) Further consideration of the practicability of any alternatives.

(e) Inclusion of all practicable measures to minimize harm.

(3) Pursuant to the Fish and Wildlife Coordination Act, the FAA shall apply the instructions contained in paragraph 85i.

(4) If a state Coastal Zone Management Program or section 4(f) of the DOT Act are significantly involved, the instructions under paragraphs 85m and 85g, respectively, are to be followed.

l. *Floodplains.* (1) Paragraph 47e(12) presents the requirements for the analysis of impacts on floodplains and the information needed in the environmental assessment. When the initial analysis indicates that the applicable thresholds established in paragraph 47e(12)(d) or 47e(12)(j) are exceeded, the FAA shall prepare an environmental impact statement. Federal, state, or local agencies with floodplain jurisdiction and expertise may become cooperating agencies.

(2) Further analysis shall include the following as applicable to the proposal:

(a) A more detailed analysis of other impact areas (e.g., water quality, induced development, construction impacts) as may be necessary to determine more precisely the impacts on the natural and beneficial floodplain values, including alterations to the present flood storage volume and flooding cycle.

(b) A more detailed assessment of the risk to human life and potential future damage to the transportation facility or other property within the floodplain.

(c) Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.

(d) Further consideration of the practicability of any alternatives.

(e) Inclusion of all practicable measures to minimize harm and to restore and preserve the natural and beneficial floodplain values affected. Commitments to later compliance with special flood related design criteria or the imposition, in advance, of protective conditions may be warranted in some situations.

(f) Evidence that the action conforms to applicable state and/or local floodplain protection standards.

m. *Coastal Zone Management Program.* (1) The procedures for determining consistency with approved state coastal zone management programs are outlined in paragraph 47e(13). If a state which has such a program raises an objection based on inconsistency of the proposed action with its program, approval of such action shall not be given unless the objection is satisfied or successfully appealed by the sponsor to the Secretary of Commerce. The process will normally be completed prior to a

determination by the FAA as to whether or not an environmental impact statement is needed for the proposal. If any issues remain that have not been resolved regarding the relationship of the action to an approved coastal zone management program, such issues shall be identified in the scoping process and resolved in the environmental impact statement. In this situation, the state coastal zone management agency shall be invited to participate in the scoping process.

(2) If there is no aproved state program for a coastal area and there appear to be significant impacts per paragraph 47e(13)(a), the FAA shall consult as necessary with state and Federal agencies with jurisdiction and expertise to determine any additional needs for detailed coastal and marine studies.

n *Prime and Unique Farmland.* If upon review of the environmental assessment the local USDA office finds that potential significant environmental impacts exist according to the threshold established in paragraph 47e(14)(c), additional analysis is needed in the environmental impact statement. The FAA shall ask USDA to be a cooperating agency. The analysis may evaluate the impacts on agricultural production in the area, any disruption of the farming community either as a direct result of construction or by changes in land use associated with the action, and measures to minimize the harm. Such measures may include adjustment in the action to reduce the amount of prime or unique farmland taken out of production or retaining as much of the land as possible for agricultural use by incorporation into compatible land use plans.

o. *Energy Supply and Natural Resources.* Additional analysis in an environmental impact statement is needed if the examination as described in paragraph 47e(15) indicates that the thresholds are exceeded. Such analysis shall include additional detail as needed to fully explain the degree of the problem and measures to be taken to minimize the impact. Measures such as more efficient airfield design, ground access improvements, or energy efficient building design shall be considered and described where applicable and incorporated in the action to the extent possible. The Department of Energy may be a cooperating agency and be of assistance in determining additional specific analysis needed and in judging the seriousness of impacts.

p. *Light Emissions.* The description of potential annoyance from airport lighting and measures to minimize the effects as contained in an environmental assessment per paragraph 47e(16) will usually be sufficient for an environmental impact statement, in which case no further analysis is necessary. Further consideration may concentrate on previously unconsidered mitigation measures and alternatives. It is possible that the responsible official will judge that a special lighting study is warranted.

q. *Solid Waste Impacts.* The information in the environmental assessment as discussed in paragraph 47e(18) will usually be sufficient to describe any solid waste impacts related to the action. Only if significant problems are anticipated with respect to meeting any applicable local, state, or Federal regulations on solid waste management will any additional information or analysis be needed. Additional data may include results of any further consultation with affected agencies and measures to be taken to minimize the impacts. Disposal which would adversely affect water quality or other impact categories may be discussed under those categories or appropriately cross referenced.

r. *Construction Impacts.* The environmental assessment shall usually contain sufficient discussion of construction impacts, per paragraph 47e(19), to obviate the need for any further information in an environmental impact statement. In an unusual circumstance where a construction impact would create significant consequences which cannot be mitigated, a more thorough discussion is needed, including the results of contacts with those agencies which have concerns and the reasons why such impacts cannot be avoided or minimized to insignificant levels.

s. *Design, Art, and Architectural Application.* The environmental assessment will normally include appropriate discussion of the application of design, art, and architecture in mitigating adverse visual and other environmental impacts and encouraging enhancement of the environment. In this context, the determination of "significant" impacts in this category sufficient of itself to require preparation of an environmental impact statement is usually not relevant nor is there need for more extensive detailed analysis in an environmental impact statement. The environmental assessment shall be reviewed, however, to assure that appropriate consideration has been given as discussed in paragraph 41b. FAA can encourage but cannot impose application of design, art, and architectural principles on an airport sponsor. Therefore, if additional information or analysis is needed in an environmental impact statement, it shall be discussed with and agreed upon by the sponsor. It should be noted that extensive detailed design concepts are not usually developed until after the environmental action has been completed. FAA Order 5100.35, Design, Art, and Architecture in Airport Development, prescribes guidelines for treating and promoting design, art, and architectural objectives in Airport Development Aid Program projects.

86. *Adverse Impacts Which Cannot be Avoided, Short Term Uses and Long Term Productivity, and Irreversible and Irretrievable Commitments of Resources.* These subjects shall be covered under the heading "Environmental Consequences" in the environmental impact statement and need not be repeated in separate sections. The various impact categories described in paragraph 85 shall normally include and identify those adverse impacts which cannot be avoided. These discussions shall also examine, as applicable, the extent to which the proposal involves tradeoffs between short term environmental gains at the expense of long term losses or long term gains at the expense of short term losses and the extent to which the proposal forecloses or broadens future options. The extent to which the proposal would irreversibly and irretrievably curtail the range of beneficial uses of the environment shall be identified where significant. If new, unusual, or limited sources or types of materials are involved in a project, a quantitative estimate and description shall be included. Normally, labor and materials required to accomplish an airport development project do not significantly curtail the range of beneficial uses of the environment. Depletion of materials in short supply or significant irreversible changes in natural and cultural resources shall be covered.

87. *List of Preparers, List of Parties to Whom Sent.* a. CEQ 1502.17 requires that "The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. . . . Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages."

b. A list of agencies and organizations and persons to whom copies of the statement have been sent shall also be included.

88. *Index and Appendices.* a. An index shall be included at the end of an environmental impact statement to assist the reader and facilitate review.

b. When an appendix is used, CEQ 1502.18 requires that it: "(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference. . . . (b) Normally consist of material which substantiates any analysis fundamental to the impact statement. (c) Normally be analytic and relevant to the decision to be made. (d) Be circulated with the environmental impact statement or be readily available on request."

89. *Miscellaneous.* CEQ 1502.21, .22, and .24 discuss in detail "Incorporation by reference," "Incomplete or unavailable information," and "Methodology and scientific accuracy," respectively. These sections should be reviewed for appropriate treatment of these instructions in an environmental impact statement.

Chapter 9. Environmental Impact Statement Processing

90. *General.* a. This chapter applies to proposed Federal actions requiring an environmental impact statement. The process for an environmental impact statement is shown in steps 30 through 46 of figure 1.

b. Environmental impact statements shall be reviewed by affected FAA program divisions and staff officers at the regional level prior to filing or public review. This internal review is to assure that related foreseeable agency actions by other FAA elements are properly covered in the draft statement and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out.

c. For adoption of another agency's environmental impact statement, refer to CEQ 1506.3.

91. *Distribution for Federal Review of Draft Environmental Impact Statements.* The FAA region or airports district office shall distribute the draft environmental impact statement, per steps 30 through 35 of figure 1, as follows:

a. *Distribution for Headquarters Review.* Four copies of the draft environmental impact statement, including the A-95 comments and the summary sheet, are to be forwarded to the Office of Airport Planning and Programming, APP-600, which shall be responsible for further distribution within the FAA and the Office of the Secretary of Transporation.

b. *Distribution and Coordination for Intergovernmental Review.*

(1) Per CEQ 1503.1, comments on the draft environmental impact statement shall be obtained from or requested of appropriate Federal, state, and local agencies including all affected local jurisdictions.

(2) Federal agencies with jurisdiction by law or special expertise shall be asked to comment.

(3) For instructions on circulation of the summary in lieu of the full environmental impact statement, see CEQ 1502.19.

(4) All draft statements will be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise, except that statements to be coordinated with any component of DOI or DOC shall be sent directly to the Washington headquarters of these departments (at the following addresses): Assistant Secretary-Program Policy, Attention: Director, Environmental Project Review, U.S. Department of the Interior, Washington, D.C. 20240; Office of the Deputy Assistant Secretary for Environmental Affairs, U.S. Department of Commerce, Washington, D.C. 20230.

(5) All agencies shall normally receive one copy of the draft environmental impact statement except as follows:

(a) Five copies of draft statements shall be sent to the appropriate regional office of the EPA.

(b) DOI shall receive:

1 Twelve copies for projects in each state except those listed in *2* and *3* below.

2 Thirteen copies for projects in North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

3 Fourteen copies for projects in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(c) The Department of Energy shall receive five copies.

c. *Availability to the Public.* The draft environmental impact statement shall be made available for public review per CEQ 1506.6. Notices of availability shall specifically identify the person in the FAA to contact for status or other information on the environmental impact statement. Normally, this person will be the same as the one listed on the cover sheet per CEQ 1502.11(c) (also see paragraph 81a above.

d. *Filing with EPA.* The draft environmental impact statement shall be filed with EPA per CEQ 1506.9. The EPA will subsequently publish a notice in the Federal Register per CEQ 1506.10 which will begin the 90-day period after which the Federal action can be taken.

e. *Establishing Time Limits.* Pursuant to CEQ 1506.10(c), in seeking comments FAA regional airports divisions may establish a time limit of not less than 45 days for reply after which, if no comments are received, it may be presumed that the agency consulted has no comments to make. Fifteen-day extensions shall normally be granted when requested by other agencies. When DOT section 4(f) is involved, a 60-day review period is normally required by DOI. Time limits shall take into account the magnitude and complexity of the statement and degree of public interest in the proposal.

92. *Comments on the draft Environmental Impact Statement.* a. CEQ 1503.3 addresses specificity of comments. If the responsible official considers that the comments received by a commenting agency have not been made in accordance with the intent of this section, consultation with that agency may be undertaken to rectify discrepancies.

b. It is expected that the extent of comments on the draft will be reduced commensurate with the degree of involvement of the commenting agencies in the scoping process. Any problems raised by such agencies in the draft review which were thought to have been resolved during scoping may be assigned to those agencies for resolution.

c. Comments from EPA are categorized by impact and statement adequacy according to the following criteria:

(1) The impact is rated by EPA as: LO—Lack of Objections, ER—Environmental Reservations, or EU—Environmentally Unsatisfactory.

(2) The statement adequacy is categorized by EPA as: 1—Adequate, 2—Insufficient Information, or 3—Inadequate.

93. *Recirulation of the Draft.* CEQ 1502.9(a) instructs that "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action."

94. *Preparation and Review of Final Environmental Impact Statements.* a. Final environmental impact statements shall be prepared in accordance with CEQ 1503.4 (step 36 in figure 1). The contents shall be those described for the environmental assessment in Chapter 5 as expanded and elaborated on during the more detailed analyses of significant issues, as dicussed in Chapter 8, and as revised following review of the draft statement. The final statement shall satisfy all Federal, state, and local environmental requirements, including special purpose laws such as the Endangered Species Act Amendments, DOT section 4(f), and others. In addition, the final statement shall contain a concise status report (which may be included in the summary or an appendix) on the compliance or anticipated compliance with permit or license requirements.

b. The body of the environmental impact statement shall include evidence and required consultation to support the following assurances if applicable to the Federal action. The assurances themselves will not be made until the record of decision.

(1) For all airport development there shall be evidence to support the following Airport Development Aid Program grant assurances as required by the Airport Act.

(a) The project is reasonably consistent with existing plans of planning agencies for development of the area (section 16(c)(1)(A));

(b) Fair consideration has been given to the interest of communities in or near the project location (section 16(c)(3));

(c) Appropriate action had been or will be taken to restrict, to the extent reasonable, the use of land in the vicinity of the airport to purposes compatible with airport operations (section 18(a)(4));

(d) Appropriate air and water quality certificates have been or will be obtained (section 16(e)) for projects involving airport location, runway location, or a major runway extension.

(2) For actions involving an airport location, runway location, or major runway extension pursuant to section 16(c)(4) of the Airport Act, there shall be evidence to support a conclusion that:

(a) There is no feasible and prudent alternative, and

(b) All possible steps have been taken to minimize adverse effects.

(3) For actions involving the use of lands subject to section 4(f) of the DOT Act, there shall be evidence to support a conclusion that:

(a) There is no feasible and prudent alternative to the use of such land, and

(b) The project includes all possible planning to minimize harm to such lands resulting from such use.

(4) For actions involving the displacement and relocation of people, there shall be evidence to support assurances that:

(a) Fair and reasonable relocation payment and assistance have been or will be provided pursuant to provisions in Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(b) Comparable decent, safe, and sanitary dwellings available on an open occupancy basis are on the market or will be built if necessary prior to actual displacement.

(5) for actions involving new construction directly or indirectly affecting wetlands, there shall be evidence to support assurances that:

(a) There is no practicable alternative to such construction, and

(b) The proposed action includes all paracticable measures to minimize harm to wetlands which may result from such use.

(6) For actions involving a significant encroachment on a floodplain, there shall be evidence to support assurances that:

(a) There is no practicable alternative, and

(b) The action conforms to applicable state and/or local floodplain protection standards.

(7) For actions within or affecting land or water uses in an area covered by an approved state coastal zone management program, there shall be evidence to support an assurance that the action is consistent with the approved state coastal zone management program to the fullest extent practicable. (If the action is determined to be inconsistent with the state's approved program, the Federal agency shall not approve the action except upon a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or necessary in the interest of national security.)

c. CEQ 1504 establishes procedures for "environmental referrals" to CEQ by Federal agencies with disagreements on the environmental effects of a proposal. When a notice of intended referral has been received on an Airports Program environmental impact statement, a copy of the notice shall be forwarded to APP-600 which will advise P-1. Every effort shall be made to resolve the issues prior to processing the final environmental impact statement. Resolution of issues shall be documented in the final statement. Notification in writing to the FAA from the referring agency indicating that its objetions have been resolved shall be obtained to obviate the requirement for concurrence in the final statement by P-1 per paragraph 95a(5).

95. *Approval of Final Environmental Impact Statements.* a. *Delegation to FAA.* Final approval authority on environmental impact statements for airport actions has been delegated to the FAA but subject to prior concurrence by the Assistant Secretary for Policy and Internatinal Affairs, P-1, for certain categories of actions. P-1 requires that a draft record of decision accompany, but not be part of, any final statement sent through that office for concurrence. This draft record of decision is for environmental review purposes only and does not constitute a review by P-1 of the Airports Program's project or funding decision. This draft record of decision shall state what the FAA's preferred alternative is, include the information specified in CEQ 1505.2 (b) and (c), indicate what environmental commitments (if any) are to be included as a consition for a favorable decision on the preferred alternative and how these will be implemented (e.g., special condition in grant agreement, property conveyance deed, plans and specifications), and incorporate proposed applicable assurances pursuant to paragraph 94(b). The draft record of decision will not include project or funding information which is not relative to environmental approval. Actions requiring P-1 concurrence on the final statement are the following:

(1) Any new airport serving a metropolitan area (construed as a standard metropolitan statistical area unless specifically directed otherwise).

(2) Any new runway or runway extension for an airport, any part of which is located in a standard metropolitan statistical area and is either certificated under section 612 of the Federal Aviation Act of 1958, as amended, or used by large aircraft (except helicopters) of commercial operators.

(3) Any project to which a Federal, state, or local government agency has expressed opposition on environmental grounds.

(4) Any project for which the Assistant Secretary for Policy and International Affairs requests an opportunity to review and concur in the final statement or for which FAA requests such review and concurrence by that office.

(5) Any project for which a notice of intended referral to CEQ has been received from another agency per CEQ

1504 and the objections have not been resolved (see paragraph 94c).

b. *Airports Program Approval Authority.* (1) The Associate Administrator for Airports has final impact statement approval authority for any project in the categories specified in subparagraph a above, subject to prior review for legal sufficiency by the Chief Counsel and concurrence by the Assistant Secretary for Policy and International Affairs.

(2) The Assistant Secretary may determine, after review of a draft statement, that a final statement on an action covered by suparagraph a can be processed without prior concurrence by that office. In such case, the approval authority by the Associate Administrator for Airports may by delegated to the region on a case-by-case basis.

(3) Those actions in (2) above for which the Associate Administrator for Airports has delegated approval authority and all other environmental impact statements may be approved by the regional director or his designee. Approval may be given after review for legal sufficiency by regional counsel and subject to prior concurrence by the Director, Office of Airport Planning and Programming, and the Chief Counsel, when such concurrence is deemed necessary upon headquarters' review of the draft statement or when requested by the regional director (steps 37 through 45, figure 1).

c. *Headquarters Review.* (1) When final approval of an environmental statement is retained in headquarters, the headquarters coordination is initiated when statements are received in the Office of Airport Planning and Programming. Copies are forwarded by APP–600 to the Office of Environment and Energy, the Office of the Chief Counsel for review for legal sufficiency, and then to appropriate elements of the Office of the Secretary of Transportation when required for review and concurrence, with a request for response within 15 to 30 days depending upon the complexity of the statement. Following headquarters review, the statement is revised as necessary or information added. The statement, with any comment, is then submitted to the Associate Administrator for Airports for approval (steps 38 through 41, figure 1).

(2) When approval authority is delegated to the regional director and concurrence by headquarters is requested, two copies are to be forwarded to APP–600 for action (step 44 in figure 1).

d. *Approval.* As the mechanism for approval of a final statement, a declaration approximately as follows be added to the summary (paragraph 81). Signature and date blocks shall be added for the concurrence of appropriate offices and approval or disapproval of the approving official (steps 41 or 45, figure 1).

"After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969."

96. *Notification and Distribution of Approved Final Environmental Impact Statement.* a. *General.* After approval of the final environmental impact statement, distribution by the region or airports district office to EPA, other agencies and organizations, and the public shall, insofar as possible, be simultaneous so as to avoid unnecessary inquiries and insure that all interested parties have a fair opportunity to review the documentation (step 46 in figure 1). If there have been only minor changes to the draft, refer to CEQ 1503.4(c) for circulation of less than the entire document.

b. *Distribution to EPA.* The FAA regional office preparing the final environmental impact statement shall forward to EPA one copy of the final statement if it was categorized LO–1. Otherwise, five copies shall be sent to EPA. In the event that EPA has comments on a final impact statement, the FAA regional office shall make every reasonable effort to resolve any conflicting issues. If the issues cannot be resolved, the matter shall be referred to APP–600.

c. *Distribution to the Office of Environment and Energy.* The region shall send one copy to AEE–1 for information and for ultimate transmission to the DOT library.

d. *Distribution to the Civil Aeronautics Board.* The region shall send one copy of statements for air carrier airports to the following CAB address for information: Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20420.

e. *Other Distribution by the Region.* A copy of the final environmental impact statement shall also be sent to each Federal, state, and local agency and private organizations which made substantial comments on the draft statement and to individuals who requested a copy of the final statement or who made substantive comment on the draft. The sponsor of the project shall also be sent a copy as well as the appropriate state and areawide clearinghouses unless otherwise designated by the governor. A copy of the approved final statement shall be sent to APP–600 for information unless a copy has been retained when approved by the Associate Administrator for Airports. When the number of commentors is such that distribution in this manner is impractical, alternative arrangements shall be made after consultation with EPA and DOT, through APP–600.

f. *Availability to the Public.* (1) Additional copies shall also be made available by the region to the public for review by distribution to appropriate locations accessible to the general public.

(2) The availability of the final statement shall be announced in the appropriate local media in a manner similar to the announcement method for the draft environmental impact statement.

g. *Filing with EPA.* (1) The region shall distribute to EPA the required five copies of the final statement for Federal Register notification. The region shall forward the copies directly to: Director, Office of Federal Activities, A–104; Environmental Protection Agency; room 537, West Tower; 401 M Street, S.W.; Washington, D.C. 20460. A copy of the transmittal to EPA shall be forwarded to APP–600 for record purposes.

(2) In accordance with CEQ 1506.10(b) "No decision on the proposed action shall be made or recorded [see paragraph 98, below] . . . until the later of the following dates: (1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section [1506.10] for a draft environmental impact statement. (2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement."

h. CEQ 1503.1(b) provides that "An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision. . . ."

97. *Other Availability fo Final Statements.* In addition to the availability and distribution of approved final environmental impact statements, proposed final statements should normally be made available upon request for inspection by the public and

by Federal, state, or local agencies prior to final approval and filing with EPA. Such statements shall carry a notation that they have not been approved and filed.

98. *Decision.* a. Following the review periods prescribed in CEQ 1506.10, the FAA decisionmaker may make a decision on the Federal action (see steps 47 through 53 of figure 1). The environmental impact statement and other environmental documents shall be included in the administrative record and made available to the decisionmaker. CEQ 1505.2 requires a record of this decision and specifies information to be included in the record of decision. CEQ 1505.2(b) states "An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions." The Airports Program's statutory mission is to promote the development of a safe and efficient nationwide airport system adequate to meet the current and projected growth in aviation, and this mission is to be given appropriate weight in any final decision on an action. Based upon the data presented in the environmental impact statement and other relevant considerations, the record of decision shall also include the appropriate assurances ad delineated in paragraph 94b.

b. Any mitigation measures which were made a condition of the approval of the environmental impact statement shall be included in the record of decision. Proposed changes in or deletions of mitigation measures which were a condition of approval of the environmental impact statement must be reviewed by the same FAA offices which reviewed the final statement and must be approved by the environmental impact statement approving official.

c. If the decisionmaker wishes to take an action which was included within the range of alternatives of an approved environmental impact statement but was not the agency's preferred alternative as identified in the final statement, the decisonmaker must first coordinate a draft record of decision for concurrence with the same FAA and DOT offices whose concurrence was required for approval of the final statement. These offices may concur without comment, may concur on the condition that specific mitigation measures be incorporated in the record of decision, may request that a supplement to the environmental impact statement be prepared and circulated, or may nonconcur. The decisionmaker shall not approve the Federal action over a nonconcurence.

d. If the alternative the decisionmaker now wishes to take action on involves a special interest (e.g., section 4(f) land, endangered species, wetlands, historic sites, or others), the FAA must first complete any required evaluation and consultation that has not been done, supplementing the original environmental impact statement, prior to taking the action. Supplements to environmental impact statements shall be reviewed and approved in the same manner as the original document.

99. *Implementation of Environmental Commitments.* a. In accordance with CEQ 1505.3, "Mitigation . . . and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency." This section of the CEQ Regulations further specifies actions which the lead agency shall take to implement environmental committments. The FAA shall take steps as appropriate to the action, through special conditions in grant agreements, airport site approvals, property conveyance deeds, releases, airport layout plan approvals, and contract plans and specifications and shall monitor these as necessary to assure that representations made in the environmental documentation with respect to mitigation of impacts will be carried out.

b. Generally, the following guidelines apply to the inclusion of special environmental assurances in grant agreements, property conveyance deeds, releases, and airport layout plan approvals:

(1) Include actions or commitments by the airport sponsor, if any, which are critical to the decision.

(2) Include significant measures for mitigation of adverse impacts.

(3) Include actions to be taken by the sponsor to identify mitigating measures or to encourage others to take mitigating measures.

(4) Include special commitments to ensure compatibility of the airport with the surrounding area.

(5) Do not include in grant agreements standard items that are incorporated in project plans and specifications.

(6) Do not include assurances which are found to derogate safety. APP-600 is to be contacted to discuss disposition of any previously approved environmental commitments which appear to fall into this category.

Chapter 10. Tiering, Time Limitations, Written Reevaluations, Supplements

100. *General.* After a draft or final environmental impact statement or a finding of no significant impact has been prepared, there are circumstances which involve further environmental documentation. These are discussed in the following paragraphs.

101. *Tiering.* a. Tiering is defined in CEQ 1508.28 and further discussed in CEQ 1500.4(i), 1502.4(d), and 1502.20. CEQ 1508.28 states that tiering is appropriate when the sequence of analyses is:

(1) "From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis."

(2) "From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe."

b. In the Airports Program, tiering is most applicable in the circumstances listed below. (Care must be exercised when tiering not to separate actions which are functionally related and have no independent utility. See paragraph 26.)

(1) Programmatic statements (as for new legislation or a new National Airport System Plan) followed by site specific statements are required.

(2) Environmental documents resulting from master planning covering specific short term projects, in a long term development context, to be followed at a later time when further specific projects become ripe for decision.

(3) Environmental documents for airport location approvals to be followed at a later time by specific development projects as the need develops. The subsequent environmental analysis or statement will then focus on the development which is proposed for decision and exclude from consideration the issue of airport location (including other airport sites as reasonable alternatives to the proposed action) since this has already been decided.

(4) Environmental documents for airport layout plan approvals. Tiering in this case may work in either of two ways. One is that all of the development on an airport layout plan may be

environmentally approved (i.e., an unconditionally approved airport layout plan) if appropriate analyses have been completed and applicable assurances (such as for DOT section 4(f), relocation, wetlands, floodplains, coastal zone management programs) can be made. The appropriate environmental action choice for any future Federal actions involving development on an unconditionally approved airport layout plan would be either a written reevaluation or a supplement (see paragraphs 103 and 104, respectively). Tiering is more likely to be applied in this manner to airport layout plans which have resulted from master planning as described in subparagraph (2) above. The second way in which tiering applies to airport layout plan approvals is by the environmental approval of the more immediate range development shown on an airport layout plan with deferral of environmental action on later stages of development because the time is not ripe for decision on these stages. This situation may occur either with or without master planning having been done. The latter method of tiering will result in conditionally approved airport layout plans. At the time that the later development is proposed for decision, a new environmental analysis or statement will be required. More specific instructions on airport layout plan approvals are contained in paragraph 30.

c. For instructions relative to summarizing, referencing, and making available previously tiered environmental documents, see CEQ 1502.20.

102. *Time Limitations for Environmental Documents.* a. The time limitations below have been established for all DOT environmental impact statements. The time limitations in subparagraph (2) apply to final environmental impact statements approved after July 30, 1979, and apply effective July 30, 1982, to final statements approved prior to July 30, 1979.

(1) A draft environmental impact statement may be assumed valid for a period of not more than three years. If the final statement is not submitted within three years from the date of the draft statement circulation, a written reevaluation of the draft shall be prepared by the responsible Federal official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the draft statement remain applicable, accurate, and valid. If there have been changes in these factors which would be significant in the consideration of the proposal, a supplement to the draft statement or a new draft statement shall be prepared and circulated.

(2) With regard to approved final impact statements, four sets of conditions have been established: (a) If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within three years from the date of approval of the final statement, a written reevaluation of the adequacy, accuracy, and validity of the final statement shall be prepared. If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental environmental impact statement shall be prepared and circulated.

(b) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy, and validity of the final statement shall be made at each major approval point which occurs more than three years after approval of the final statement and a new supplemental statement prepared, if necessary.

(c) If major steps toward implementation of the proposed action have not occurred within the timeframe (if any) set forth in the final statement or within five years from the date of approval of the final statement, the final statement will be assumed to be no longer valid and a new assessment or new environmental impact statement will be required.

(d) If the proposed action has been restrained or enjoined by court order after approval of the final statement, the five-year period may be extended by the time equal to the duration of the injunction or restraining order.

b. For Airports Program environmental actions, the above time limitations shall also apply to preliminary section 16(c)(4) findings of no significant impact which have been circulated to EPA and DOI and to final approved section 16(c)(4) findings of no significant impact.

103. *Written Reevaluations.* When required by paragraphs 102a(1), a(2)(a), and a(2)(b), the responsible official shall prepare a written reevaluation of the continued applicability, adequacy, accuracy, and validity of a draft or final impact statement. There is no requirement for a specific format or content, for coordination, or for publication of this written reevaluation. It shall include the name of the FAA responsible official and the date prepared and shall become part of the administrative record on the action. No further processing is required unless the written reevaluation indicates that a supplemental or new draft or final impact statement is necessary.

104. *Supplements.* a. CEQ 1502.9(c) requires agencies to prepare supplements to draft or final impact statements under two circumstances:

(1) "The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) "There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

b. A change in the proposed action, in the environmental circumstances, or in the agency's decision (reference paragraph 98) may cause a supplement to a draft or final impact statement to be prepared soon after the original document. In other cases, a supplement may be required because the time limitation on an environmental document has been exceeded and a written evaluation has indicated that the contents of the original document are no longer applicable, adequate, accurate or valid per paragraph 102. The format and contents of a supplement are not specified and will be expected to vary depending on the extent of the changes. A supplement is likely to be in the form of either:

(1) A separate document which discusses the changed circumstances, identifies the parts of the original environmental document which have been affected, and presents the new data.

(2) Changes to the original environmental document in the form of new pages to replace existing pages and/or new pages to be added.

c. Supplements are subject to the same circulation and filing requirements as the original environmental document and to the same approval level (unless a new element is present which would raise the required approval level). Scoping is not required. A supplement shall be considered part of the documentation for decisionmaking. If a supplement changes a record of decision, a new record of decision must be issued after the required 30-day review period.

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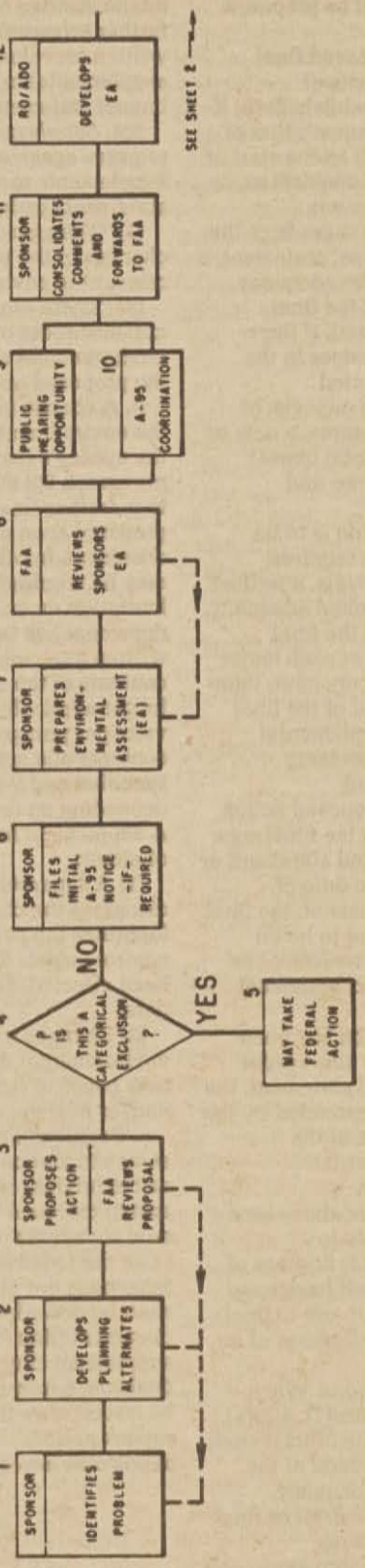
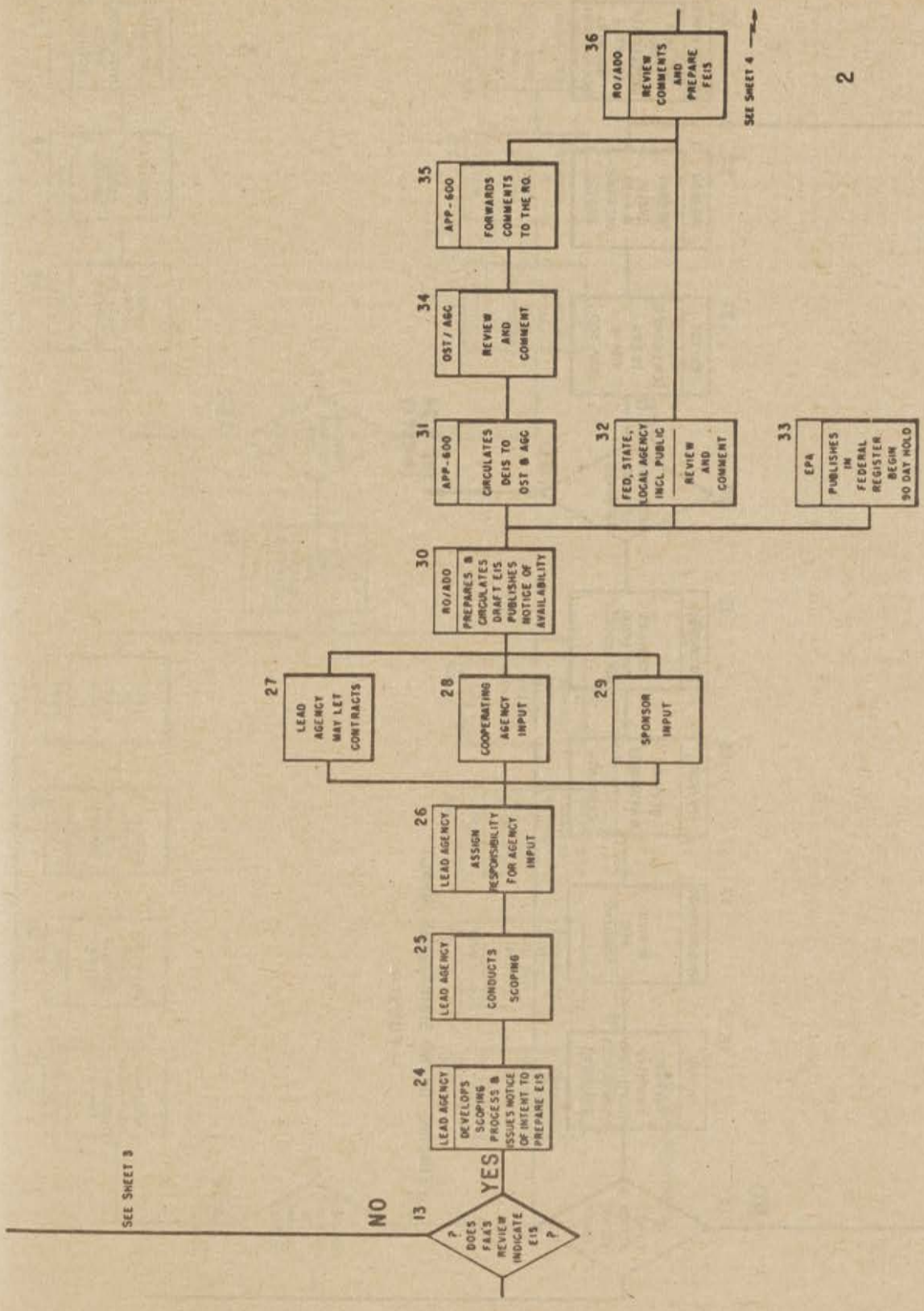
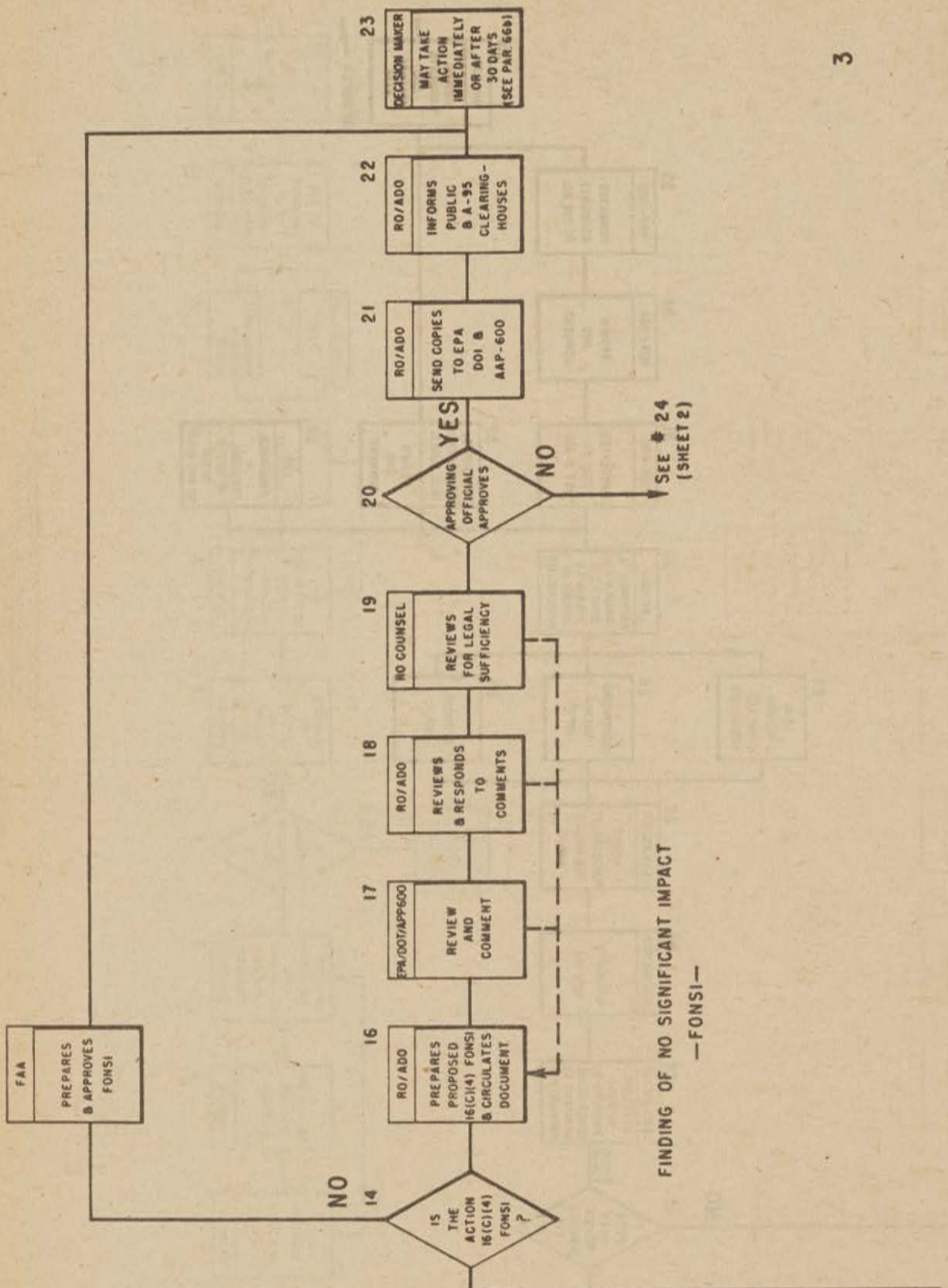
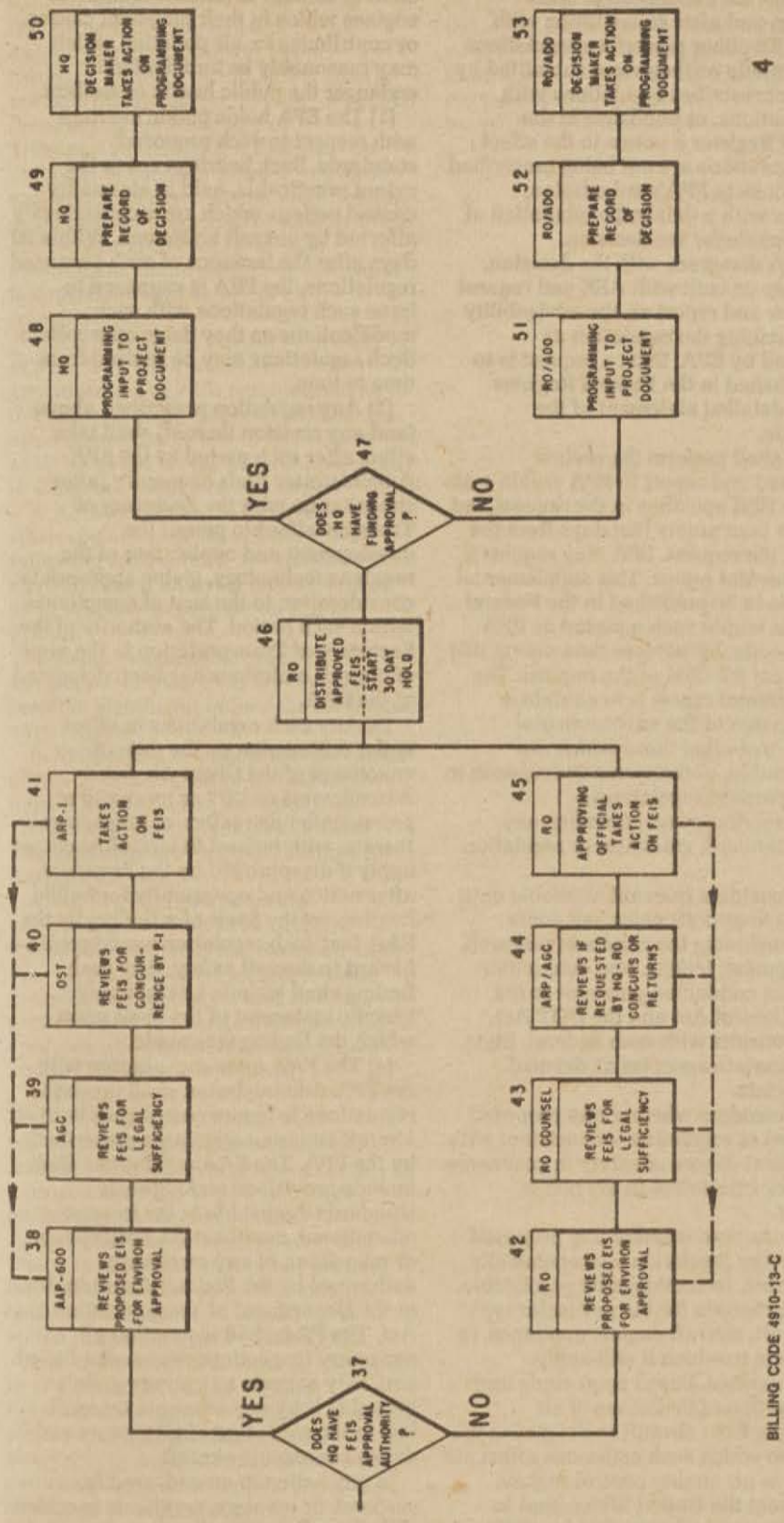
FIGURE 1. FLOW DIAGRAM OF ENVIRONMENTAL PROCESS.




SEE SHEET 3
NO
13
? DOES FAA'S REVIEW INDICATE EIS ?
YES
24
LEAD AGENCY
DEVELOPS SCOPING PROCESS & ISSUES NOTICE OF INTENT TO PREPARE EIS
25
LEAD AGENCY
CONDUCTS SCOPING
26
LEAD AGENCY
ASSIGN RESPONSIBILITY FOR AGENCY INPUT
27
LEAD AGENCY MAY LET CONTRACTS
28
COOPERATING AGENCY INPUT
29
SPONSOR INPUT
30
RO/ADO
PREPARES & CIRCULATES DRAFT EIS PUBLISHES NOTICE OF AVAILABILITY
31
APP-600
CIRCULATES DEIS TO OST & AGC
32
FED, STATE, LOCAL AGENCY INCL. PUBLIC
REVIEW AND COMMENT
33
EPA
PUBLISHES IN FEDERAL REGISTER BEGIN 90 DAY HOLD
34
OST / AGC
REVIEW AND COMMENT
35
APP-600
FORWARDS COMMENTS TO THE RO.
36
RO/ADO
REVIEW COMMENTS AND PREPARE FEIS
SEE SHEET 4
2


23
DECISION MAKER
MAY TAKE ACTION IMMEDIATELY OR AFTER 30 DAYS (SEE PAR. 66b)
22
RO/ADO
INFORMS PUBLIC & A-95 CLEARING-HOUSES
21
RO/ADO
SEND COPIES TO EPA DOI & AAP-600
20
APPROVING OFFICIAL APPROVES
YES
NO
SEE # 24 (SHEET 2)
19
RO COUNSEL
REVIEWS FOR LEGAL SUFFICIENCY
18
RO/ADO
REVIEWS & RESPONDS TO COMMENTS
17
EPA/DOT/APP600
REVIEW AND COMMENT
16
RO/ADO
PREPARES PROPOSED 16(C)(4) FONSI & CIRCULATES DOCUMENT
14
IS THE ACTION 16(C)(4) FONSI ?
NO
15
FAA
PREPARES & APPROVES FONSI
FINDING OF NO SIGNIFICANT IMPACT
—FONSI—
3



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Appendix 7. Environment and Energy

1. *General.* The Office of Environment and Energy (AEE) is the focal point for all aviation related environmental and energy programs within the Agency. AEE is responsible for noise and aircraft emissions rulemaking and for establishing Agency policies in these areas. The Office initiates, conducts, and sponsors a broad range of monitoring and R & D activities in support of these functions. In addition, AEE provides environmental impact assessment guidance to all regions, offices services and other subunits of the Agency, other Federal agencies and state and local organizations.

2. *Environmental Responsibilities.* a. *Noise.* The Office of Environment and Energy after consulting with the Secretary of Transportation and the Environmental Protection Agency prescribes and amends standards for the measurement of aircraft noise and sonic boom and prescribes and amends such regulations as necessary to provide for the control and abatement of aircraft noise and sonic boom. These include the application of such standards and regulations in the issuance, amendment, modification, suspension or revocation of any certificate authorized. No exemption may be granted with respect to any standard or regulation without consultation with EPA before such exemption is granted except those involving safety in air commerce or air transportation, then EPA is to be consulted as soon as practicable after the exemption is granted. No original type certificate is be issued for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations, unless standards and regulations have been prescribed which apply to such aircraft and protect the public from aircraft noise and sonic boom. In addition to rulemaking initiated by AEE, EPA may submit to AEE proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations as EPA determines necessary to protect the public health and welfare. Upon receipt of the EPA proposed regulations, AEE within thirty (30) days of the date of submission publishes the proposed regulations in a notice of proposed rulemaking.

Within sixty (60) days after publication of the EPA proposed regulations, a hearing commences at which interested persons are afforded an opportunity for oral (as well as written) presentations of data, views and arguments. Within a reasonable time after the conclusion of such hearings and after consultation with EPA, AEE either prescribes regulations substantially as they were submitted by EPA, or prescribes regulations with modifications, or publishes in the **Federal Register** a notice to the effect that regulations are not being prescribed in response to EPA's submission, together with a detailed explanation of the rationale for the decision.

If EPA disagrees with the decision, EPA may consult with AEE and request a review and report on the advisability of prescribing the regulation as proposed by EPA. Such a request is to be published in the **Federal Register** with a detailed statement of the rationale.

AEE shall perform the review requested and report to EPA within such time as EPA specifies in the request, but not less than ninety (90) days from the date of the request. EPA may request a supplemental report. This supplemental report is to be published in the **Federal Register** within such a period as EPA may specify, by not less than ninety (90) days from the date of the request. The supplemental report is to contain a comparision of the environmental effects, including those which are unavoidable, of the action in response to EPA's propose regulations.

In prescribing and amending any noise standard, guidance, or regulation AEE:

(1) Considers relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to the Noise Control Act and the DOT Act.

(2) Consults with such Federal, State, and interstate agencies as deemed appropriate.

(3) Considers whether any proposed standard or regulation is consistent with the highest degree of safety in commerce or air transportation in the public interest.

(4) Considers whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply.

b. *Emissions.* Based upon study and investigation of emissions of air pollutants from aircraft to determine the extent to which such emissions affect air quality in air quality control regions throughout the United States, and to determine the technological feasibility of controlling such emissions, the EPA from time to time, issues proposed emission standards applicable to emissions of any air pollution from any class or classes of aircraft or aircraft engines which in their judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare.

(1) The EPA holds public hearings with respect to such proposed standards. Such hearings are to the extent practicable, held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, the EPA is supposed to issue such regulations with such modifications as they deem appropriate. Such regulations may be revised from time to time.

(2) Any regulation prescribed above (and any revision thereof) shall take effect after such period as the EPA Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. The authority of the Secretary of Transportation in the area of aircraft emissions has been delegated to the FAA.

(3) Any such regulations in effect under this section on the date of enactment of the Clean Air Act Amendments of 1977 or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the FAA that such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(4) The FAA after consultation with the EPA Administrator, shall prescribe regulations to insure compliance with all aircraft emission standards prescribed by the EPA. The FAA regulations shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. The FAA shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in it by any other provision of law in the execution of all powers and duties concerning aircraft.

In any action to amend, modify, suspend, or revoke a certificate in which violation of an aircraft emission standard prescribed under the Clean Air

Act, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation and that such amendment, modification, or revocation is consistent with safety in air transportation.

3. *Environmental Impact Statement or FONSI.* The environmental consideration of AEE actions shall be documented in an EIS or FONSI as appropriate. Decisions in this regard shall be based on the criteria presented in Chapters 2 and 3 of this Order.

4. *Actions Subject to Environmental Assessments and Procedures.* The following AEE actions are subject to environmental analysis and a decision as to whether to prepare an EIS or FONSI.

a. Rules, regulations, orders, advisories, or directives which may result in significant impact on the human environment.

b. Statements of Policy, the execution of which could result in a significant impact on the human environment.

5. *Categorically Excluded Actions.* The following are excepted actions for the reasons given:

a. All FAA actions to insure compliance with the EPA aircraft emissions standards are excepted since the FAA is mandated by law to issue compliance regulations and EPA has performed all required environmental analyses prior to the issuance of their aircraft emissions standards.

6. *Timing and Length of Environmental Procedures.* An environmental assessment shall be initiated when AEE proposes or receives a proposed action which may have environmental consequences. Assessments shall be completed in a timely manner and should not become the pacing item for proposed actions. Length of assessments should be as stated in section 1502.7 of the CEQR.

7. *Actions Subject to Appeal Rights.* a. In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue the certificate holder has appeal rights, as contained in section 609.

b. In any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order if it finds that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation.

[FR Doc. 79-17031 Filed 6-1-79; 8:45 am]
BILLING CODE 4910-13-M

federal register

Monday
June 4, 1979

Part IV

Department of Transportation

Federal Aviation Administration

Technical Groups of the Special Aviation Fire and Explosion Reduction Advisory Committee; Meeting

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Groups of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the SAFER Technical Group on Compartment Interior Materials, and of the SAFER Technical Group on Post-Crash Fire Hazard Reduction, to be held in the Building 11 Conference Room at the Nationl Aviation Facilities Experimental Center (NAFEC), Tilton Road, Rt. 563, Cardiff, Atlantic City, New Jersey 08405, according to the following schedule:

Tuesday, June 26, 1979

• 9:00 to 4:30—Initial session of the SAFER Technical Group on Compartment Interior Materials.

Wednesday, June 27, 1979

• 9:00 to noon—Final session of the SAFER Technical Group on Compartment Interior Materials.
• 1:00 to 4:30—Tour of NAFEC fire test facilities.

Thursday, June 28, 1979

• 9:00 to 4:30—Initial session of the SAFER Technical Group on Post-Crash Fire Hazard Reduction.

Friday, June 29, 1979

• 9:00 to noon—Final session of the SAFER Technical Group on Post-Crash Fire Hazard Reduction.

The agenda for each SAFER Technical Group is as follows:

A. *Agenda for the SAFER Technical Group on Compartment Interior Materials.* Group Leader: Martin E. Wilfert; Deputy Group Leader: Sanford Davis.

1. *Definition of the Group's scope and objectives.*
2. *Review and update of the pertinent service record.*
• Update on impact-survivable fire accident statistics.
• Review of recent fire accident studies.
3. *Assessment of the adequacy of pertinent FARs.*
• Factors affecting cabin materials fire safety.
• Current airworthiness rules covering compartment interior materials.
• Fire protection of emergency evacuation slides.
• Flammability of passenger carry-on articles.
• Effects of inservice deterioration of the fire resistance characteristics of materials.
4. *Review of current R & D programs*
• FAA—NAFEC programs.
• NASA programs.
• Industry programs.
5. *Discussion of the need to redirect or modify existing R & D programs.*
6. *Discussion of whether the state-of-the-art would warrant short-term rule making, or other action, within the Group's area of concern.*
7. *Time, place, and agenda for the next Group meeting.*

B. *Agenda for the SAFER Technical Group on Post-Crash Fire Hazard Reduction.* Group Leader: Edward F. Versaw.

1. *Definition of the Group's scope and objectives.*
2. *Review and update of the pertinent service record.*
• Update on impact-survivable fire accident statistics.
• Review of recent fire accident studies.
3. *Assessment of the adequacy of pertinent FARs.*
• Current airworthiness rules aimed at minimizing flammable fluid spillage.
• Addtional design features provided in current transport aircraft to minimize flammable fluid spillage.
• NTSB recommendations.
4. *Review of current R & D programs.*
• Crashworthy fuel systems.
• Anti-misting fuels.
• Fuel-tank inerting systems.
5. *Discussion of the need to redirect or modify existing R & D programs.*
6. *Discussion of whether the state-of-the-art would warrant short-term rule making, or other action, within the Group's area of concern.*
7. *Time, place, and agenda for the next Group meeting.*

Attendance is open to the interested public but limited to the space available. With the approval of the Group Leader, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify, not later than the day before the meeting, Irving Fagin, AFS–105, Excecutive Director, SAFER Advisory Committee, Engineering and Manufacturing Division (AFS–100), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone (202) 426–8198. Any member of the public may present a written statement to the appropriate SAFER Technical Group at any time.

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

C. A. McKay,

Acting Director, Flight Standards Service.

[FR Doc. 79–17254 Filed 6–1–79; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
June 4, 1979

Part V

Department of the Interior

Bureau of Indian Affairs

Off-Reservation Treaty Fishing; Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Off-Reservation Treaty Fishing; Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

AGENCY: Department of the Interior.

ACTION: Emergency Rule.

SUMMARY: This subpart governs off-reservation fishing for chinook salmon in the waters of the Columbia River drainage basin located in the State of Idaho by members of the Nez Perce Tribe and the Shoshone-Bannock Tribes of the Fort Hall Reservation. After seeking the views of the tribes and the fish and game management agency of the State of Idaho, the Secretary has determined that the spring run of chinook salmon in the Columbia River system is dangerously low and that all fishing for chinook salmon must be banned. These emergency regulations implement that determination. They are promulgated pursuant to the regulatory mechanism established in Subpart A of this part.

DATES: This rule becomes effective at 12:01 a.m. on June 5, 1979. Unless rescinded sooner, this rule expires at the same time on September 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Hough, Special Assistant to the Secretary of the Interior, U.S. Department of the Interior, 915 2nd Avenue, Room 3292, Seattle, Washington 98174 (206/442–0814).

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of federally reserved Indian fishing rights. The Nez Perce Tribe has off-reservation treaty fishing rights in portions of the State of Idaho reserved under the Treaty of June 11, 1855 (12 Stat. 957) and the Treaty of June 9, 1863 (14 Stat. 647), as affirmed in *Sohappy* v. *Smith*, 302 F. Supp. 899 (D. Or. 1969). The Shoshone-Bannock Tribes of the Fort Hall Reservation has off-reservation treaty fishing rights in certain unoccupied lands within the State of Idaho reserved under the Treaty of July 3, 1868 (15 Stat. 673), as affirmed in *State* v. *Tinno*, 94 Ida. 759; 497 P.2d 1386 (1972). Such nonexclusive treaty fishing rights include the right to take chinook salmon in various streams and rivers of the Columbia River drainage basin located in the State of Idaho.

The spring run of chinook salmon in the Columbia River drainage basin is now underway. Due primarily to the drought of 1976–1977 and the extensive salmon catch in the Pacific Ocean fishery, this run indicates that stocks are in a disastrously depressed condition. The U.S. Fish and Wildlife Service has determined that the chinook runs above Bonneville Dam and Lower Granite Dam are the lowest in history, grossly below the minimum conservation escapement levels. If the spring run chinook salmon stock is to survive, every available fish is needed for spawning, and no harvest of any kind can be tolerated.

Given these facts, the Secretary has determined that off-reservation treaty fishing for chinook salmon must be closed altogether to assure conservation and prevent further deterioration of the fishery. The Department has consulted with the fishery officials of the State of Idaho, which has closed the fishery under its regulatory control. The Nez Perce and Shoshone-Bannocks have been consulted as well, but these tribes have failed to act to close their fisheries completely.

Faced with this conservation emergency, the failure of the affected tribes to close their fisheries, and the fact that the spring chinook run is already in progress and in imminent peril, the Secretary has determined that the exigencies require the promulgation of this rule as an emergency rule effective immediately, and that formal advance notice and public comment procedures are impracticable and contrary to the public interest. These regulations are therefore effective at 12:01 a.m. on June 5, 1979.

It has been concluded by the Secretary that the delay caused by full compliance with the National Environmental Policy Act of 1969 would violate the Secretary's duty, under the statutory and regulatory authority cited and the general trust responsibility, to preserve the fishery resource. Accordingly, pursuant to the Council on Environmental Quality's emergency regulations, 40 CFR § 1506.11, no environmental impact statement will be done prior to publication of these emergency regulations. The Secretary has, however, directed that expeditious preparation of an environmental assessment begin immediately.

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

Comments from the affected tribes and other interested persons are invited at the address indicated above and will be considered with respect to the amendment or revocation of this subpart.

The primary author of this document is: James Jannetta, Attorney Advisor, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. 20240 (202/343–6967).

Dated: June 1, 1979.

Cecil D. Andrus,

Secretary.

Part 256 of Chapter 1 of Title 25 CFR is amended by adding the following Subpart C.

Subpart C—Columbia River Drainage Basin Chinook Salmon Fishery in Idaho.

Sec.

256.22 Purpose of this subpart
256.23 Application
256.24 Fishery closure
256.25 Term of regulation
256.26 Emergency regulations
256.27 Other laws and regulations

Authority: The provisions of Subpart C are issued under the authority of 25 U.S.C. 2, 9; 43 U.S.C. 1457; the reorganization plan No. 3 of 1950 (64 Stat. 1262), and 25 CFR 256, Subpart A.

Subpart C—Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

§ 256.22 Purpose of this subpart.

The purpose of these regulations is to assure the conservation of the spring run chinook salmon resource in the waters of the Columbia River drainage basin in the State of Idaho for the present and future use and enjoyment of the Indians with treaty fishing rights therein and other persons entitled thereto, and to prevent the deterioration of this fishery resource. This subpart is promulgated pursuant to Subpart A and is subject to the provisions contained therein.

§ 256.23 Application.

This subpart governs off-reservation fishing for chinook salmon in the waters of the Columbia River drainage basin located in the State of Idaho by members of the Nez Perce Tribe of Idaho and the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

§ 256.24 Fishery closure.

No member of the Nez Perce Tribe of Idaho or the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, may fish for or catch chinook salmon by any means whatever for any purpose whatever in any and all off-reservation waters of the Columbia River drainage basin located within the State of Idaho.

§ 256.25 Term of regulation.

This regulation is effective beginning June 5, 1979, and expires on September 15, 1979.

§ 256.26 Emergency regulations.

The Area Manager of the U.S. Fish and Wildlife Service in Boise, Idaho, is authorized to make emergency changes in these regulations, including closures and restrictions or the relaxation thereof when necessary or appropriate to meet conservation or enforcement needs. Emergency regulations are effective upon their issuance or according to their terms and remain effective until modified or rescinded by the Area Manager or terminated by their terms.

§ 256.27 Other laws and regulations.

Nothing in this subpart shall be construed to relieve any Indian from any applicable requirement lawfully imposed by the United States or the State of Idaho, nor does anything herein authorize any Indian to act contrary to any restriction or requirement of applcable tribal law not inconsistent herewith.

[FR Doc. 79-17464 Filed 6-1-79; 12:34 pm]

BILLING CODE 4310-02-M

Reader Aids

Federal Register

Vol. 44, No. 108

Monday, June 4, 1979

INFORMATION AND ASSISTANCE

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523-3419	
523-3517	
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Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects

FEDERAL REGISTER PAGES AND DATES, JUNE

31599-31938.....1
31939-32192.....4

CFR PARTS AFFECTED DURING JUNE

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.

4 CFR

Proposed Rules:
331.....31655
332.....31655
351.....31655

5 CFR

Proposed Rules:
Ch. I.....31892

7 CFR

418.....31599
910.....31610
912.....31610
918.....31939
1421.....31611, 31614

9 CFR

78.....31619
82.....31620
92.....31621
113.....31622

Proposed Rules:
318.....31665
381.....31665

10 CFR

51.....31939
211.....31623, 31626

Proposed Rules:
490.....31922
508.....31677

12 CFR

612.....31940
614.....31940

Proposed Rules:
11.....31984

14 CFR

39.....31941, 31942
71.....31944-31947
97.....31947

Proposed Rules:
Ch. I.....32001
71.....32001, 32002
73.....32003

15 CFR

2301.....31629

16 CFR

13.....31949

Proposed Rules:
305.....32013

19 CFR

4.....31950
6.....31950
10.....31950, 31962
11.....31962
18.....31962
19.....31962
54.....31962
111.....31962
112.....31962
123.....31950
133.....31962
134.....31962
148.....31962
151.....31962
159.....31972
162.....31950, 31962
171.....31950
172.....31950

Proposed Rules:
141.....31668
142.....31668

20 CFR

651.....31629

Proposed Rules:
401.....31668

21 CFR

446.....31636

Proposed Rules:
145.....31669

24 CFR

1914.....31973

Proposed Rules:
803.....31670
882.....31670
888.....31670
1917.....32003

25 CFR

256.....32190

27 CFR

Proposed Rules:
4.....32014
5.....32014
7.....32014

28 CFR

2.....31637, 31638

29 CFR

1601.....31638
2520.....31639, 31640

Proposed Rules:
1910.....31670

30 CFR

55.....31908
56.....31908
57.....31908

32 CFR

1201.....31976
1203.....31976
1212.....31976
1214.....31976
1216.....31976
1220.....31976
1221.....31976
1250.....31976

33 CFR

Proposed Rules:
161.....32004

36 CFR

Proposed Rules:
223.....32005

39 CFR

10.....31976
111.....31976
601.....31976

40 CFR

52.....31976, 31980

Proposed Rules:
52.....32005
100.....32006
122.....31673
123.....31673
124.....31673
146.....31673

41 CFR

Proposed Rules:
Ch. 51.....32011

42 CFR

405.....31641, 31802
466.....32074

45 CFR

5a.....31981
1611.....31981

47 CFR

1.....31643, 31650
81.....31650

Proposed Rules:
73.....31673
90.....31674

49 CFR

393.....31981
1033.....31982, 31983

Proposed Rules:
1300.....32011

50 CFR

611.....31651, 31652
661.....31983
662.....31654

Proposed Rules:
661.....32012
810.....31858

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

CIVIL AERONAUTICS BOARD

28302 5–15–79 / Economic proceedings rules of practice; editorial amendment

FEDERAL COMMUNICATIONS COMMISSION

25228 4–30–79 / FM broadcast stations in Burlington and Newport, Vt.; changes in table of assignments

25232 4–30–79 / FM broadcast station in Broken Bow, Okla.; changes in table of assignments

25232 4–30–79 / FM broadcast stations in Fairbanks and North Pole, Alaska; changes in table of assignments

25233 4–30–79 / FM broadcast station in Vinita, Okla.; changes made in table of assignments

25233 4–30–79 / FM broadcast station in Ripley, W. Va.; changes in table of assignments

25234 4–30–79 / FM broadcast station in Savannah, Tenn.; changes in table of assignments

25234 4–30–79 / FM broadcast station Stamps, Ark.; changes in table of assignments

25235 4–30–79 / Television broadcast stations in Lexington and Florence, Ky.; changes in table of assignments

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner—

25837 5–3–79 / Homeownership and project rehabilitation; downpayments requirements and maximum subsidy payments

JUSTICE DEPARTMENT

U.S. Parole Commission—

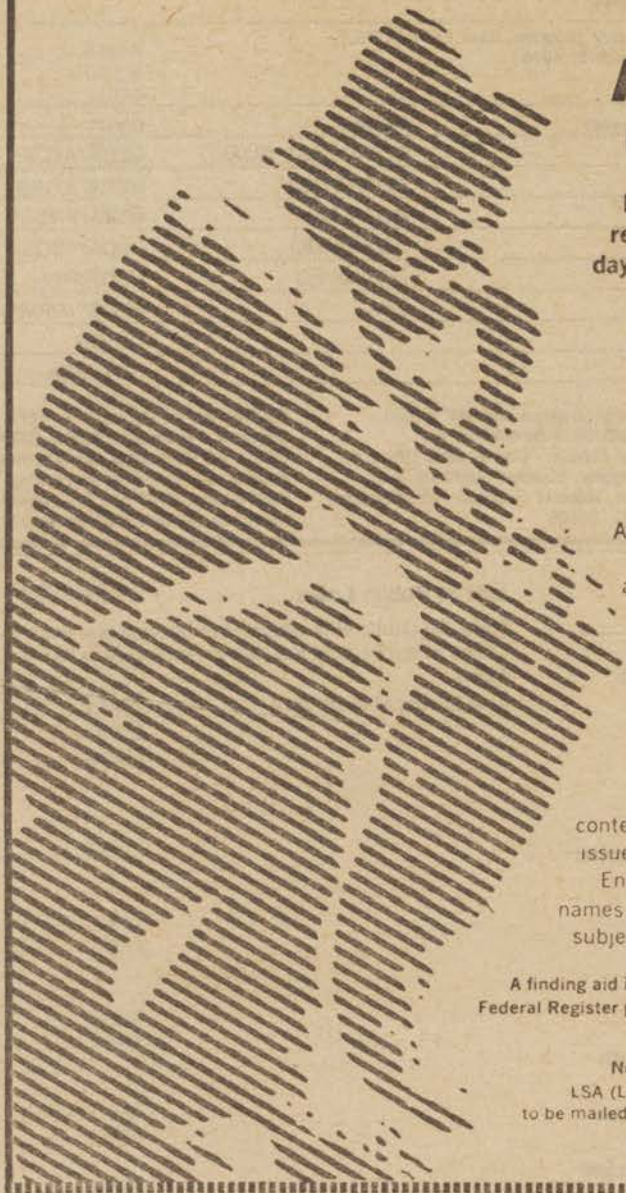
26540, 26548 26550 5–4–79 / Paroling, recommitting and supervising Federal prisoners

[Corrected at 44 FR 27658, 5–11–79]

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 May 29, 1979



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